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NOTES OF RECENT CASES.

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
6th March, 1961.

The Commissioner of Income-Tax, Poona *v.* The Buldana District Main Cloth Importers Group.
C.A. Nos. 41-44 of 1960.

Income-tax Act (XI of 1922), *section* 3—" *An association of persons* "—*What constitutes.*

The question referred to the High Court was whether under the facts and circumstances of the case, the Buldana District Main Cloth Importers' Group constituted an 'Association of persons' within the meaning of section 4 of the Income-Tax Act, 1922, and was liable to be assessed to Income-tax and Excess Profits Tax in that status.

Relying upon their own earlier judgments reported in (1959) S.C.J. 93 : (1959) I.T.R. 55, 59 wherein it was observed : "The Tribunal thought that since the scheme was completely under the control of the Deputy Commissioner, the assessees could not be said to have carried on business by working the scheme. We are unable to see that the fact of the control of the Deputy Commissioner can prevent the working of the scheme by the assessees from being a business carried on by them. In our view, it only comes to this that the assessees had agreed to do business in a certain manner,"

Held: "We are in respectful agreement with this observation. In our view the respondent was an association of persons and was rightly so assessed to Income-tax and Excess Profits Tax."

K. N. Rajagopal Sastri, for Appellant.

J. M. Thakar, for Respondent.

G.R. *Appeals allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
6th March, 1961.

Gurbachan Singh *v.* Puran Singh.
Civil Appeal No. 492 of 1958.

Punjab - Custom—Ancestral land—What is.

Approving the Punjab Judgments reported in 48 P.L.R. 536 and A.I.R. 1948 E.P. 22, 25, wherein it was observed "However, where the ancestral portion of the land so given or thrown was by no means negligible and bore a definite proportion to the whole of the land there can be no difficulty in apportioning the land acquired according to the areas of the two classes of such land, namely, ancestral and non-ancestral." The Court held "The District Judge in our view rightly

held that 28 Kanals and 3 Marlas were ancestral and he has rightly decreed the suit *qua* that portion."

Case considered : L. R. 35 I.A. 206, 211 : 18 M.L.J. 379.

Achhru Ram, for Appellants.

I. M. Lal, for Respondents Nos. 1 to 4.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, M. Hidayatullah and J. C. Shah, JJ.
7th March, 1961.

The Commissioner of Income-tax, Madhya Pradesh, Nagpur *v.* Khushal Chand Daga.
C.As. Nos. 148-150 of 1960.

Income-tax Act (XI of 1922), *section* 24—*Loss—Computation not notified—Right of Assessee to have loss re-determined.*

But it appears that the procedure laid down by section 24 (3) of the Income-tax Act under which the Income-tax Officer has to notify to the assessee by order in writing the amount of the loss as computed by him for the purposes of that section was not followed. No doubt, under section 30 an appeal lies, if the assessee objects to the amount of loss computed and notified under section 24 ; but inasmuch as the Income-tax Officer had not notified the loss computed by him by order in writing, an appeal could not be taken on that point. In our opinion, the assessee was therefore, entitled to have the loss re-determined in a subsequent year.

K. N. Rajagopal Sastri, for Appellant.

J. M. Thakar, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., J. R. Mudholkar and T. L. Venkatarama Aiyar, JJ.
8th March, 1961.

The State of Andhra Pradesh *v.* Kandimalla Subbaiah.
Cr.A. No. 109 of 1960.

Penal Code (XLV of 1860), *sections* 120-B, 462,-464, 420, 466, 467 *and* 471 *and Prevention of Corruption Act (II of* 1947), *section* 30—*Scope.*

Conspiracy to commit an offence is itself an offence and a person can be separately charged with respect to such a conspiracy. There is no analogy between section 120-B and section 109 Indian Penal Code. There may be an element of abetment in a conspiracy ; but conspiracy is something more than an abetment. Offences created by sections 109 and 120-B, Indian Penal Code are quite distinct and there is no warrant for limiting the prosecution to only one element of conspiracy, that is, abetment when the allegation is that what a person did was something over and above that. Where a number of offences are committed by several persons in pursuance of a conspiracy it is usual to charge them with those offences as well as with the offence of conspiracy to commit those offences.

H. J. Umrigar, for Appellant.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
16th March, 1961.

Kailash Chandra *v.* The Union of India.
C.A. No. 283 of 1960.

Railway Establishment Code—Rule 2406/2 (*a*)—*Fundamental Rule* 56 (*b*) (*i*)—*Article* 311(2) *of the Constitution of India* (1950)—*Age of retirement of the ministerial servants.*

The correct interpretation of Rule 2046(1) (*a*) of the Railway Establishment Code, in our opinion, is that a railway ministerial servant falling within this clause may be compulsorily retired on attaining the age of 55 but when the servant is between the age of 55 and 60 the appropriate authority has the option to continue

him in service, subject to the condition that the servant continues to be efficient but the authority is not bound to retain him even if a servant continues to be efficient.

C. B. Agarwala, for Appellant.

R. Ganapathy Iyer, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo and J. R. Mudholkar, JJ.
16th March, 1961.

Bhau Ram *v.* Baij Nath Singh.
Advocate General Madhya Pradesh and Advocate-General Rajasthan Interveners.
C.A. No. 270 of 1955.

Practice—Appeal—Preliminary objection—Whether the defendant appellant is precluded from proceeding with the appeal because subsequent to the grant of the special leave to appeal to him he withdrew the price of pre-emption which was deposited by the Respondent No. 1 *in the Courts below—The doctrine of approbate and reprobate.*

By Majority : It seems to us that a statutory right of appeal cannot be presumed to have come to an end because the appellant has in the meantime abided by or taken advantage of something done by the opponent under the decree and there is no justification for extending the rule in *Tinkler's case* (1849) 4 Exch. 187: 154 E.R. 1176 *Tinkler* v. *Hilder*) to cases like the present. In our judgment it must be limited only to those cases where a person has elected to take a benefit otherwise than on the merits of the claim in the *lis* under an order to which benefit he could not have been entitled except for the order. Here the appellant, by withdrawing the pre-emption price has not taken a benefit *de hors* the merits. Besides, this is not a case where restitution is impossible or inequitable. Further, it seems to us that the existence of a choice between two rights is also one of the conditions necessary for the applicability of doctrine of approbate and reprobate. In the case before us there was no such choice before the appellant, and, therefore, his act in withdrawing the pre-emption price cannot preclude him from continuing his appeal.

L. K. Jha, for Appellant.

N. C. Chatterjee, for Respondent. No. 1.

I. N. Shroff, for Interveners.

G.R. ——— *Preliminary objection overruled.*

[SUPREME COURT.]

K. Subba Rao and Raghubar Dayal, JJ.
16th March, 1961.

Singhai Ajit Kumar *v.* Ujayar Singh.
C.A. No. 462 of 1957.

Hindu Law—Succession—Whether an illegitimate son of a Sudra vis a vis *his self-acquired property is entitled to succeed to the other half share got by the widow, after the succession opened out to his putative father on the death of the said widow.*

Referring to (1932) I.L.R. 55 Mad. 856: 62 M.L.J. 698 the Court held that the learned Judges (Madras High Court), expressely left open the present question. This decision cannot, therefore, be invoked in support of the contention that in a case where the doctrine of reverter applies the illegitimate son is excluded from succession. On the other land, the Nagpur High Court in I.L.R. 1938 Nag. 255, rightly came to the conclusion that where on a partition between a legitimate and an illegitimate son, the widow was allotted a share, on her death the illegitimate son was entitled to a share in the property. We, therefore, hold that on the death of the widow, the illegitimate son, the father of the first respondent herein, succeeded to the other half share of the estate of his putative father Raja Ajit Singh.

C. B. Agarwala, for Appellant No. 1.

Har Dayal Hardy, for Respondent No. 1.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
17th March, 1961.

Thakur Bahadur Singh *v.* The State of Rajasthan.
Petition No. 200 of 1955.

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, *section* 4—" *Tribute* " —*Construction* —*Hukamnama under section* 190 *of the Marwar Land Rules*, 1949.

The word 'tribute' has apparently no equivalent in the local languages, so that it was obviously used as a convenient and compendious expression to designate certain imposts which were levied by the rulers of the several States which integrated to form the State of Rajasthan. Further, this circumstance should obviously induce some caution before the dictionary meaning of the the English word 'tribute' is treated as expressing the intention of the framers of the Rajasthan Act.

Approving the decision of the Rajasthan High Court reported in I.L.R. 1955 Raj 534, the Supreme Court held "We have thus reached the same conclusion as the learned Judges of the Rajasthan High Court, though on a different line of reasoning.

On the construction which we have adopted of the expression 'tribute' in section 4 of Rajasthan Act, the petitioner can have no legal or legitimate grievance against the enforcement of the payment made against him.

S. K. Kapoor and *Ganpat Rai*, for Petitioner.

G. C. Kasliwal, Advocate-General, Rajasthan and *D. Gupta*, for Respondents.

G.R. *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
17th March, 1961.

The Durgah Committee, Ajmer *v.* Syed Hussain Ali and others.
The Attorney General for India Intervenor.
C.A. No. 272 of 1960.

Constitution of India (1950) *Article* 19(1) (*f*) *Article* 26 *and Articles* 14 *and* 25—*Durgah Khwaja Saheb Act XXXVI of* 1955, *section* 2 (*b*) (*v*), 5, 11, 16 *and* 18—*Vires of.*

We must therefore, hold that the challenge to the vires of section 5 and the subsidiary sections of the Durgah Khwaja Sahib Act which deal with the powers of the Committee on the ground that the said provisions violate the fundamental right guaranteed to the denomination represented by the respondents under Article 26 (*c*) and (*d*) fails.

The argument that section 16 of that Act offends against the fundamental right guaranteed by Article 14 read with Article 32 seems to us to be wholly untenable. The policy underlying section 16 is in our opinion healthy and unexceptionable and so the provisions of section 16 can be sustained on the ground that they are obviously in the interest of the institution as well as the parties concerned. The provisions for compulsory adjudication by arbitration are not unknown and it would be idle to contend that they offend against Article 14 read with Article 32 of the Constitution.

H. N. Sanyal, Additional Solicitor General of India, for Appellants and the Intervener.

G. S. Pathak, for Respondents Nos. 1 to 7.

A. G. Ratnaparkhi, for Respondents Nos. 8 to 9.

G.R. *Appeal allowed.*

[SUPREME COURT]

K. Subba Rao and Raghubar Dayal, JJ.
17th March, 1961.

Keshavlal Mahanlal Shah *v.* The State of Bombay (now Gujrat).
Crl. A. No. 127 of 1960.

Criminal Procedure Code (*V of* 1898), *section* 197—*Scope* —*Sanction* —*When necessary for prosecution.*

Following their earlier decision reported in (1958) S.C.J. 594 : (1958) M.L.J. (Crl.) 473 : (1958) 2 M.L.J. (S.C.) 45 : (1958) 2 An.W.R. (S.C.) 45 : (1958) S.C.R. 1037, the Court held that the same can be said with respect to the provisions of section 197 of the Code of Criminal Procedure. "We therefore hold that no previous sanction is necessary for a Court to take cognizance of an offence committed by a Magistrate while acting or purporting to act in the discharge of his official duty if he had ceased to be a Magistrate at the time the complaint is made or police report is submitted to the Court, i.e., at the time of the taking of cognizance of the offence committed. We accordingly dismiss the appeal."

B. P. Maheshwari, for Appellant.

Vir Sen Sawhney, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

S. K. Das, J. L. Kapur, M. Hidayatullah, J. C. Shah and T. L. Venkatarama Ayyar, JJ.
25th April, 1961.

Harinagar Sugar Mills Ltd., Bombay *v.* Shri Shyam Sundar Shyam Jhunjhunwala and others.
C.A. Nos. 33 and 34 of 1959.

Companies Act (*I of* 1956), *section* 111 *and* 155—*Powers of the Central Government exercising appellate jurisdiction—Special leave to appeal under Article* 136 *of the Constitution —Section* 38 *of the Companies Act* (*VII of* 1913).

The Attorney-General contended that even if the Central Government was required by the provisions of the Act and the rules to act judicially, the Central Government still not being a tribunal, this Court has no power to entertain an appeal against its order or decision. But the proceedings before the Central Government have all the trappings of a judicial tribunal. Pleadings have to be filed, evidence in support of the case of each party has to be furnished and the disputes have to be decided according to law after considering the representations made by the parties. If it be granted that the Central Government exercises judicial power of the state to adjudcate upon rights of the parties in civil matters when there is a *lis* between the contesting parties, the conclusion is inevitable that it acts as a tribunal and not as an executive body. We therefore over-rule the preliminary objection raised on behalf of the Union of India and by the respondents as to the maintainability of the appeals.

By Majority : Whether in spite of the opinion recorded by the High Court and by the Joint Secretary Ministry of Finance in respect of another block out of shares previously attempted to be transferred, there were adequate grounds for directing registration, is a matter on which we are unable to express any opinion. All the documents which were produced before the Deputy Secretary are not printed in the record before us and we were told at the Bar that there were several other documents which the Deputy Secretary took into consideration. In the absence of anything to show that the Central Government exercised its restricted power in hearing an appeal under section 111 (3) and passed the orders under appeal in the light of the restrictions imposed by Article 47-B of the articles of association and in the interest of the company, we are unable to decide whether the Central Government did not transgress the limits of their power. We are however of the view that there has been no proper trial of the appeals, no reason having been given in support of the orders by the Deputy Secretary who heard the appeals. In the circumstances, we quash

the orders passed by the Central Government and direct that the appeals be re-heard and disposed of according to law.

A. V. Viswanatha Sastri and *Ganpat Rai*, for Appellants.

B. P. Maheshwari, for Respondents.

M. C. Setalvad, Attorney-General for India and *B. R. L. Iyengar* and *T. M. Sen*, for Union of India.

G.R. — *Appeals remanded for re-hearing.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
27th April, 1961.

Harnam Das *v.* The State of U.P.
Cr.Appeal No. 74 of 1961.

Criminal Procedure Code (*V of* 1898), *sections* 99-*A*, 99-*B*, and 99-*D—Scope—Penal Code* (*XLV of* 1860), *sections* 153-*A and* 295-*A*.

By Majority :—We are, therefore, of opinion that under section 99-D, Criminal Procedure Code it is the duty of the High Court to set aside an order of forfeiture if it is not satisfied that the grounds on which the Government formed its opinion that the books contained matters the publication of which would be punishable under any one or more of sections 124-A, 153-A or 295-A of the Penal Code could justify that opinion. It is not its duty to do more and to find for itself whether the book contained any such matter whatsoever.

What then is to happen when the Government did not state the grounds of its opinion ? In such a case if the High Court upheld the order it may be that it would have done so for reasons which the Government did not have in contemplation at all. If the High Court did that, it would really have made an order of forfeiture itself and not upheld such an order made by the Government. This, as already stated, the High Court has no power to do under section 99-D. It seems clear to us, therefore, that in such a case the High Court must set aside the order under section 99-D, for it cannot then be satisfied that the grounds given by the Government justified the order. You cannot be satisfied about a thing which you do not know. This is the view that was taken in *Arun Ranjan Ghose* v. *State of West Bengal*, (1955) 59 C.W.N. 495, and we are in complete agreement with it. The present is a case of this kind. We think that it was the duty of the High Court under sec-99-D to set aside the order of forfeiture made in this case.

ORDER OF THE COURT :—In view of the opinion of the majority, this appeal will be allowed and the order of the High Court, set aside. The appellant will be entitled to the return of all the books, documents and other things seized from him under the order now set aside. He will also be entitled to the refund of expenses and costs that he had to pay under the order of the High Court.

Veda Vyasa, Senior Advocate *S. K. Kapur* and *Ganpat Rai*, for Appellant.

G. C. Mathur , *C. P. Lall*, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
2nd May, 1961.

Instalment Supply (P.) Ltd *v.* The Union of India.
Petition No. 146 of 1958.

Bengal Finance (*Sales Tax*) *Act*, 1941 *as extended to the State of Delhi—Sales Tax on hire purchase—Validity.*

Following 1959 S.C.R. 445 (*MithanLal* v. *State of Delhi*) the Court held that the law Bengal Finance (Sales Tax) Act, 1941 had been validly promulgated. According to that decision, the definition of 'sales' could be legally extended so

as to make it permissible to tax sale of goods involving the supply of materials in pursuance of building contracts. As a result of the decision aforesaid of this Court, a Press Note was issued by the Commissioner of Sales Tax, Delhi, to the effect that provision regarding levy of tax on hire-purchase transactions was valid and that all hire-purchase dealers as come within the purview of sections 4 and 7 of the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, are liable to pay sales tax and to get themselves registered under the Act; that all such hire-purchase dealers as were formerly registered with the Sales Tax Department shall be deemed to be registered with effect from the first of April, 1958 for the purpose of the Act and that all hire-purchase dealers who had not got themselves registered so far should immediately have themselves so registered in order to avoid being penalised for contravention of the provisions of the Act. In pursuance of the aforesaid circular of the Department, the petitioner company was also called upon to comply with the requirements of the Act. The company made representation to the Commissioner of Sales Tax that the Company and other such companies which deal in hire-purchase were not liable to pay sales tax, but the Commissioner of Sales Tax refused to accept the Company's contention.

It cannot, therefore, be argued that the Department had, in any sense, estopped itself by issuing these instructions, or that this Court, by laying down the law in *Mithanlal's case* had laid down a new rule of law which has no application to pending proceedings for levy, assessment and realisation of sales tax, either in Delhi or elsewhere.

It is well settled that in matters of taxation there is no question of *res-judicata* because each year's assessment is final only for that year and does not govern later years, because it determines only the tax for a particular period, (See the decision in the House of Lords in L.R. 1960 A.C. 551 approving and following the decision of the Privy Council in L.R. 1926 A.C. 94.

Veda Vyasa, *S. K. Kapur* and *Ganpat Rai*, for Petitioners.

C. K. Daphtary, Solicitor General of India with *R. N. Dhebar*, for Respondent.

G.R.

Petition dismissed.

Veeraswami, J.
2nd February, 1961.

Thirumalachariar *v.* Varadappa Chettiar.
S.A. No. 388 of 1959.

Limitation Act (IX of 1908)—*Article* 75—*Waiver under —When could be relied upon —Burden of proof—Civil Procedure Code* (*V of* 1908)—*Order* 7, *rule* 6—*Pleading under—Nature of.*

Article 75 of the Limitation Act governs a suit, *inter alia*, on a bond payable by instalments, which provides that if default is made in payment of one or more instalments the whole shall be due. The starting point for limitation in such cases is when the default is first made unless the payee waives the benefit of the provision and then when a fresh default is made in respect of which there is no such waiver. Whether or not there is a waiver is a question of fact which should be pleaded and established if it is relied upon as a ground of exemption from the bar of limitation provided by Article 75. A Court cannot presume that a plaintiff would have waived the benefit and call upon the defendant to establish the contrary.

(1949) 1 M.L.J. 112, explained.

68 M.L.J. 244, referred.

The provisions of Order 7, Rule 6, Civil Procedure Code require that if a suit is instituted after the period of limitation prescribed by law, the plaint should show the ground upon which exemption from such law is claimed. The rule is mandatory and an exemption claimed on a certain ground will not enable the plaintiff to support the exemption on another ground which has not been pleaded.

64 M.L.J. 317 and A.I.R. 1933 Mad. 874 and A.I.R. 1936 Mad. 545 referred.

K. S. Champakesa Ayyangar and *K. C. Srinivasan*, for Appellant.

T. V. Balakrishnan, *N. Vanchinathan* and *A. Seshan*, for Respondent.

R.M.

Appeal allowed.

Ramachandra Iyer and Kunhammed Kutti, JJ.
13th February, 1961.

Jagannatha Iyer *v.*
Krishna Iyer.
C.R.P. No. 1326 of 1958.

Civil Procedure Code (*V of* 1908)—*Order* 21, *rule* 89—*Deposit under—Reference to existence of certain antecedent or collateral proceedings and reservation of rights therein—If would affect the unconditional nature of the deposit.*

It is no doubt true that a deposit made under Order 21, rule 89 of the Civil Procedure Code, to set aside a sale in execution of a decree, should be an unconditional one. It should be unconditional in the sense that it should not contravene the terms of the rule or frustrate its object. That is the deposit should not be accompanied by any request or statement to prevent the decree-holder and auction purchaser from unconditionally drawing the respective anounts payable to them under the rule. The deposit under rule 89 presupposes that the sale is without any irregularity and no application to set aside the sale under rule 90 could lie. A statement in an affidavit accompanying the petition under Order 21, rule 89 that the deposit is made without prejudice to his right in collateral proceedings, not being those under Order 21, rule 90, can only be a statement of fact or of certain legal rights and they cannot be held to contravene the provisions of Order 21, rule 89 and affect the nature of the deposit, if it is otherwise unconditional.

(1958) 1 Andhra W.R. 369, followed.

(1949) 1 M.L.J. 447, overruled

Case-law referred.

M. Natesan, for Petitioner.

K. V. Srinivasa Ayyar, for Respondent.

R.M. ——— *Petition dismissed.*

Rajamannar, C. J., and Kailasam, J.
3rd May, 1961.

Lakshmiah *v.*
Sriperumbudur Taluq Co-operative
Marketing Society Ltd.
W.A, No. 40 of 1961.

Constitution of India (1950)—*Article* 226—*Writ under—Against whom could lie—Board of Directors of a Co-operative Society considering objections to nomination for election—Nature of.*

Madras Co-operative Societies Act (*VI of* 1932), *section* 51—*Scope of.*

Bias—To whom could be attributed.

The Board of Directors of a Co-operative Society, in considering the objections to the nominations for the election of members of the Board, is not a Statutory Tribunal with authority to determine the rights of parties. It may be that the Directors at a meeting of the Board discharge the functions entrusted to them by the regulations. But the regulations being framed by the Society itself have no statutory force. It is only against bodies having legal authority to determine questions affecting the rights of subjects that the jurisdiction of the High Court under Article 226 of the Constitution could be invoked.

Section 51 of the Madras Co-operative Societies Act is wide enough to include a dispute relating to election of directors of a Co-operative Society and a dispute relating to the validity of a nomination will also be covered by it.

(1960) 2 M.L.J. 392, approved.

As the Board of Directors of a Co-operative Society are not occupying a judicial or quasi-judicial office there could be no application of the principle of bias to their actions.

T. V. Balakrishnan and *N. Vanchinathan,* for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*), *R. Gopalaswami Ayyangar* and *K. N. Balasubramanyam,* for Respondent.

R.M. ——— *Appeal dismissed.*

Veeraswami, J.
10th February, 1961.

Alagi Alamelu *v.* Ponniah;
S.A. No. 850 of 1958.

Practice—Injunction—Suit for declaration of title —Plaintiff held not to be entitled to the property—Defendant claiming to be rightful owner—Plaintiff's unlawful possession—If could be protected by injunction against the defendant.

A person in wrongful possession of property is not entitled to be protected against the lawful owner by an order of injunction. When once a Court finds that a plaintiff's possession of property is wrongful such possession cannot be protected by assistance of Court. The fact that if the lawful owner were to institute a suit, he might possibly fail on the ground that he was not in possession within twelve years of suit, could make no difference and cannot be a justification for the issue of an injunction maintaining the wrongful possession of the plaintiff.

M. Natesan, for Appellant.

A. Sundaram Ayyar, for Respondent.

R.M. ——— *Appeal allowed.*

[FULL BENCH.]

Rajamannar, C.J., Veeraswami and Venkatadri, JJ.
27th February, 1961.

Moolchand Kevalchand Daga *v.* Kissindoss Girdhar Doss.
L.P.A. No. 96 of 1956.

Arbitration Act (*X of* 1940), *section* 39 (2)—*Bar of appeal—Scope of—' Second Appeal '—Meaning of.*

Letters Patent (*Madras*), *Clauses* 15 *and* 44—*Judgment by a single Judge of the High Court setting aside an order of the lower Court under section* 39 *of the Arbitration Act—If appealable under clause* 15—*Clause* 44 *of the Letters Patent—Effect.*

An appeal under clause 15 of the Letters Patent (Madras) would normally lie from an order of a single Judge of the High Court provided the order is a judgment within the meaning of that clause. Clause 44 of the Letters Patent is in general terms and provides that the provisions of the Letters Patent are subject to the Legislative powers of the Governor-General. It only provides that in the exercise of such legislative powers all the provisions of the Letters Patent may in all respects be amended and altered. It is no doubt true that the term " second appeal " in section 39 (2) of the Arbitration Act is not used in the narrow and technical sense of a second appeal under section 100 of the Civil Procedure Code but means a further appeal, that is numerically a second appeal. But the further appeal contemplated is to the Court of a higher grade. Hence an appeal under clause 15 of the Letters Patent from one judge of the High Court to two or more judges of the same High Court cannot fall within the category of ' second appeal ' mentioned in section 39 (2) of the Arbitration Act.

I.L.R. 9 Cal. 428 (P.C.) followed.

8 M.L.J. 231, I.L.R. 22 Mad. 68, 11 M.L.J. 346, I.L.R. 25 Mad. 555 referred.

There is thus nothing in section 39 (2) of the Arbitration Act, either in express terms or by necessary implication, which amends or alters Clause 15 of the Letters Patent restricting the right of appeal conferred thereunder.

(1945) 1 M.L.J. 54 : I.L.R. 1945 Mad. 564; (1955) 2 M.L.J. 363 : I.L.R. 1956 Mad. 547, held not good law.

Hence an appeal under Clause 15 of the Letters Patent would lie from the judgment of a single Judge of the High Court setting aside an order of the City Civil Court under the provisions of section 39 of the Arbitration Act. Section 39 (2) of the Arbitration Act read with Clause 44 of the Letters Patent does not have the effect of barring such appeal.

Case-law referred and discussed.

D. Ramaswamy Ayyangar and *V. Krishnaswamy*, for Appellant.

S. Vaidyanathan, for Respondent.

R.M. ——— *Objection overruled.*

M—N R C

Jagadisan and Kailasam, JJ.
10th March, 1961.

Union of India by G.M., B.B. & C.I. Ry. Co. *v.* Sitaramiah.
S.A. No. 387 of 1958.

Limitation Act (*IX of* 1908)—*Article* 30—*Damages for injury to goods*—*Limitation*—*How computed.*

For purposes of a suit for compensation for damages to goods against a carrier the limitation will run under Article 30 of the Limitation Act from the date on which the consignee became aware of the damage. The date of repudiation of the claim by the carrier cannot be the starting point of limitation in such cases.

(1955) 1 M.L.J. 406; A.I.R. 1941 Cal. 304, differed.

S. S. Ramachandra Ayyar and *S. R. Kumaraswami,* for Appellant.

T. Krishnaji, for Respondent.

R.M. — *Appeal allowed.*

[Full Bench.]

Rajagopalan, Srinivasan and Venkatadri, JJ.
21st April, 1960.

S.A. No. 1048 of 1957.
L.P.A. No. 55 of 1959.

Madras Agriculturists Relief Act (*IV of* 1938), *section* 13—*Debts incurred after the commencement of the Act*—*Re-opening of payments made by a debtor in accordance with the contract and appropriated towards interest, if permissible.*

Section 13 of the Madras Agriculturists Relief Act (IV of 1938) does not render the payment of, or a contract to pay, interest on a debt incurred after the commencement of the Act at a rate higher than that prescribed therein, illegal or automatic discharge of interest stipulated at a rate higher than the one prescribed therein. Such excess interest is only made irrecoverable if the creditor seeks to enforce the debt in a Court of law. The logical result of the decision of the Full Bench in 1958 (2) M.L.J. 568 is that a debtor cannot demand re-opening of the transaction and re-calculation of the interest on the basis of the earlier bond. It must necessarily follow that in cases where he has in fact paid the interest at the contract rate and discharged his obligations in respect of interest, he cannot have the transaction re-opened, and the amount paid as interest at the contract rate re-appropriated in a different manner.

1956 (2) M.L.J. 189 is inconsistent with the principle laid down in 1958 (2) M.L.J. 568 and is no longer good law.

Section 13 is different in scope from sections 8 and 9. The words "Interest due" in the context must necessarily mean interest which is still payable, something to be paid in future, as distinguished from something which has happened in the past, something to be recovered by legal process.

L.R. (1905) 2 K.B. 307, referred to.

(1957) 2 A.W.R. 53 (F.B.), not followed.

Section 72 of the Contract Act has no application. Section 13 of Act (IV of 1938) only denies to the Creditor the right to recover through Court interest at the contract rate if it exceeded the rate provided in the section. The contract is not alleged to be nor is the payment at the higher rate illegal. There can be no question of any mistake in law in regard to such a payment voluntarily made by the debtor.

(1961) 1 M.L.J. 172 and (1961) 1 M.L.J. 240, referred to.

T. A. Ramaswamy Reddiar, for Appellant in S.A. No. 1048 of 1957.

V. C. Veeraraghavan, for Respondent in S.A. No. 1048 of 1957.

D. Ramaswami Iyengar and *T. R. Mani,* for Appellant in L.P.A. No. 55 of 1959.

K. Vaitheeswaran, for Respondent, in L.P.A. No. 55 of 1959.

K.S. — *Ordered accordingly.*

[FULL BENCH].
Rajagopalan, Jagadisan and Srinivasan, JJ.
3rd March, 1961.

Collector of Tiruchirapalli *v.* Trinity Bank.
A.A.O. No. 120 of 1957 and C.R.P. No. 512 of 1957.

Crown debts—Priority—When could be claimed —Mortgages—Suit to recover a mortgage debt—Appointment of receiver pending action to collect the rents and profits of the mortgage properties—Effect—Mortgagee, if entitled to a first charge over the collections.

An order of appointment of a receiver in an action by a simple mortgagee or an equitable mortgagee to recover the mortgage amount with a direction to him to collect and deposit to the credit of the suit the rents and profits from the hypotheca, but without an order of appropriation or allocation of the same in favour of the mortgagee, does not amount to a charging order in favour of the mortgagee over the said collections. Independently of an order of appointment of a receiver a simple mortgagee or an equitable mortgagee or a charge holder in respect of an immovable property has no security over the rents and profits accruing from that property. The mortgagee can have no greater rights over such collection by reason only of such appointment of a receiver. Hence such a mortgagee cannot claim a priority over such collection in preference to Crown debts.

54 Mad. 565 ; 41 L.W. 495 and I.L.R. (1939) Mad. 496, overruled.

(1940) 1 M.L.J. 429 and (1953) 1 M.L.J. 496, conclusion agreed to and not the reasoning.

11 Rang. 467, followed.

12 Rang. 437, 14 Rang. 292 and I.L.R. (1957) A.P. 505, dissented from.

The rule of priority of Crown debts can apply and be enforceable only as between unsecured creditors of equal degree. The priority of the Crown cannot rank as against a secured creditor so as to deprive him of his security or to affect or injure his rights as such secured creditor.

C. S. Rama Rao Sahib and *S. Ranganathan,* for Appellant.

R. Ramamurti Ayyar, P. S. Srisailam and *V. S. Ramakrishnan,* for Respondents.

R.M. — *Orders accordingly.*

Jagadisan, J.
14th March, 1961.

Muthukrishna Chettiar *v.* Meenakshi Ammal.
S.A. No. 16 of 1956.

Indian Registration Act, section 17 (2) (*vi*)—*Scope of—Compromise decree—When exempt from registration.*

The effect of clause (vi) of section 17 (2) of the Registration Act is to limit its operation to any decree or order of a Court except a decree or order which is the result of a compromise and which comprises immoveable property extraneous to the suit or proceeding which ended in the compromise. In other words a compromise decree comprising immoveable property not forming the subject-matter of the suit is not exempt from registration. The decree or order mentioned in clause (vi) not merely covers the operative part of the decree but also the compromise if any between the parties which has been recorded by the Court and which is in some way incorporated or made part of the decree.

L.R. 46 I.A. 240, followed.

43 Mad. 688, referred.

P. S. Balakrishna Ayyar and *P. S. Ramachandran,* for Appellant.

K. Kalyanasundaram, for Respondent.

R.M. — *Appeal dismissed.*

Srinivasan, J.
16th March, 1961.

Gopal Udayar *v.*
Thanapala Udayar.
C.R.P. No. 211 of 1960.

Madras Indebted Agriculturists (Repayment of Debts) Act (I of 1955), *section* 4—*Effect of.*

Section 4 of the Madras Indebted Agriculturists' (Repayment of Debts) Act, 1955, lays down the rights and obligations between the parties to a transaction in variation of the contract they have entered into. It provides that a debt shall be payable in a particular manner, *viz.*, in instalments and fixes a date for such instalments. Hence each instalment furnishes a cause of action for the creditor and he can sue for the recovery of that instalment if it is not paid within the time prescribed. The period of limitation for such cases will be governed by Article 74 of the Limitation Act.

(1959) 2 M.L.J. 423, explained.

(1959) 1 M.L.J. 312, referred.

N. K. Ramaswamy, for Petitioner.

K. Swamidurai and *Herbert Chellah*, for Respondent.

R.M. — *Petition allowed.*

Kunhammed Kutti, J.
22nd March, 1961.

Minor Rajadurai *v.*
Kunjurasu Vanniar.
C.R.P. No. 1412 of 1960.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 4-*A* (4) *and* (5) —*Joint family owning land in excess of* 13½ *acres—Right of a member for restoration of possession.*

When a Hindu joint family represented by its manager were the landlord under whom a tenant holds lands, no member of the family could be said to have any specific share in such land, and if the family as such owns land in excess of 13⅛ acres on the relevant date, no member of the family could recover possession of land under sub-section (1) of section 4-A of the Madras Cultivating Tenants Protection Act, 1955, in view of the express provisions of sub-sections (4) and (5) of that section.

K. S. Naidu and *R. Vijayan*, for Petitioner.

R. Sundaralingam, for Respondent.

R.M. — *Petition dismissed.*

Kunhammed Kutti, J.
22nd March, 1961.

Parimanam *v.* Ramanatha Iyer.
[C.R.P. Nos. 1745 of 1958, etc., to 600 of 1959.

Madras Cultivating Tenants (Payment of Fair Rent) Act (XXIV of 1956)—*Cultivating tenants—Who are—Tenancy agreement express or implied—Mere agreement to share the crop without creating any interest in land—If would amount to a tenancy agreement.*

In order to come within the definition of 'cultivating tenant' under the provisions of the Madras Cultivating Tenants (Payment of Fair Rents) Act, 1956, the holding of the land by the person claiming to be the tenant should be under an agreement of tenancy express or implied. In order to create the relationship of lessor and lessee there should be transfer of an interest in land. Though the nomenclature used in the document such as lease or license, master and servant, etc., may not be conclusive, still if on a construction of the terms of a document it is clear that no interest in land is created in favour of the cultivator, the relationship of lessor and lessee cannot be said to have come into existence. Mere exclusiveness of possession would not be conclusive to decide the question where land is cultivated under an agreement with the land owner under which the latter has reserved to himself

the right to resume cultivation at any time on payment of the remuneration due to the cultivator till then. It cannot be said that there is any lease or transfer of interest in the land to the cultivator in such cases and such a cultivator cannot come within the definition of a cultivating tenant under the Act.

(Scope of the Legislation and nature of the documents in the case, explained.)

Case-law, referred.

V. P. Raman and *P. Samuel*, for Petitioners.

K. S. Desikan, *K. Raman*, *S. Annadorai*, for Respondents.

R.M. ——— *Petition dismissed.*

Kunhammed Kutti, J. Mannargudi Municipality *v.*
23rd March, 1961. Mannargudi Bank, Ltd.
C.R.P. No. 2215 of 1959.

Madras District Municipalities Act (*V of* 1920), *section* 93, *Schedule IV*, *Rule* 19 (2), Explanation—*Applicability—Notice of demand served under section* 29 *of the Income-tax Act—If includes assessment order—Legality of levy—When could be questioned.*

Having regard to the form and content of a notice of demand under section 29 of the Income-tax Act, it is only reasonable to construe that the notice of demand contemplated to be produced under the *Explanation* to rule 19 (2) of Schedule IV of the Madras District Municipalities Act, as including an assessment order and form, production of which will amount to a substantial compliance with the requirements of the *Explanation* provided it is for the year comprising the half year in question.

The *Explanation* is not restricted only to cases of business in money-lending but covers all cases not coming under sub-rule (1) (*b*) and sub-rule (2) of rule 18. The procedure contemplated under the *Explanation* can be adopted by the assessee even where a return has been submitted by him under rule 19 (1).

Where profession tax is levied by a Municipality in contravention of the procedure laid down in the *Explanation* to rule 19 (2) of Schedule IV of the Madras District Municipalities Act, the levy will be illegal and the civil Court will have jurisdiction to set aside the same.

M. M. Ismail, for Petitioner.

R. Ramamurthi Ayyar, for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer, J. Jaya Sankar *v.* Chandra Mouleeswaran.
24th March, 1961. C.R.P. No. 1697 of 1960.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *sections* 25 (a) *and* (d) 30 *and* 38—*Applicability—Suit for a declaration of the plaintiff's right to joint possession with the defendant as trustees—Valuation for purposes of Court-fee.*

The provisions of sections 25 (*a*) and 30 of the Madras Court-fees and Suits Valuation Act will apply only to cases where the plaintiff seeks exclusive possession. Section 38 would apply only to cases where joint possession is sought as substantive relief and not as a consequentional one. Where joint possession is sought as a consequential relief there is no specific provision in the Act and it is the residuary provision of section 25 (*d*) that would apply to such cases.

T. R. Ramachandran and *K. Chandramouli*, for Petitioner.

K. S. Champakesa Ayyangar and *K. C. Srinivasan*, for Respondent.

The Government Pleader (*A. Alagiriswami*), for the State.

R.M. ——— *Petition allowed.*

Ramachandra Iyer and Kunhammed Kutti, JJ.
30th March, 1961.

Ramaswami Chettiar *v.* Raja Kuppa Chetti.
S.A. No. 615 of 1957.

Hindu Law—Minor—Notice by guardian demanding partition on behalf of minor—Severance of status —Whether in the interests of the minor and beneficial to him—If could be gone into in proceedings other than a general suit for partition.

It is now well-settled that under the Hindu Law there is no distinction between a major coparcener and a minor coparcener so far as their rights in the joint family properties are concerned. As any other coparcener a minor coparcener too has a right by a unilateral declaration on his part to effect a division in status in the family so far as he is concerned, without effecting an actual partition. But as a minor cannot be held to have a volition of his own, a guardian or next friend acting on behalf of the minor is allowed to exercise such a volition subject to the condition that it is approved by the Court as a safeguard to the minor's interest. The approval of Court necessary to make the declaration of severance in status by the guardian effective being only to safeguard the minor's interest, it should be available in any proceedings where the issue arises. It is not necessary that a general suit for partition should be filed to decide the question of the binding nature of the notice of demand for partition made on behalf of a minor.

(1959) 2 An.W.R. 140, differed.

(1959) S.C.J. 138, referred.

V. V. Raghavan and *V. Srinivasan,* for Appellant.

T. V. Balakrishnan, for Respondent.

R.M. *Appeal dismissed.*

Kailasam, J.
30th March, 1961.

Ponmalai Goundan *v.* Settia Goundan.
C.R.P. No. 243 of 1960.

Provincial Insolvency Act (V of 1920), *section* 28 (2)—*Suit by a creditor against the divided son of a Hindu family in regard to a debt incurred by the father as manager of the erstwhile joint family and subsequently adjudged insolvent—Leave of insolvency Court—If necessary.*

There is no prohibition in law against a creditor filing a suit against the sons in regard to a debt incurred by the father as manager of the joint family for joint family purposes, even though subsequently they became divided and the father is adjudged insolvent. Section 28 (2) of the Provincial Insolvency Act could not be a bar to the filing of such a suit against the sons as the sons were divided and their share does not vest in the Official Receiver and as such the question of obtaining the leave of the insolvency Court does not arise.

(1942) 1 M.L.J. 173, referred.

Where the debt is incurred by the father for joint family purposes before partition the son's liability to pay the debt out of the family properties in his hands continues even after the partition. But the right to sell the son's share does not vest in the Official Receiver on the insolvency of the father. Hence section 28 (2) of the Act cannot bar a suit against the son against whose assets the insolvency Court has no control.

P. C. Parthasarathi Ayyangar and *P. Narasimhan,* fo Petitioner.

K. Raman (amicus curiae), for Respondent.

R.M. *Petition dismissed.*

Jagadisan, J.
3rd April, 1961.

Kulandayan *v.* Omayal Achi.
S.A. No. 1144 of 1958.

Principal and Agent—Accounting—Duty of agent to account—When arises—Suit for account—Limitation—How computed.

Limitation Act—Article 89—*Computing of period of limitation—How made.*

In cases of principal and agent where the agency itself is terminated, the principal can maintain a suit for account against the agent without a prior demand before the institution of the suit. Hence the period of limitation will start from the date of the termination of the agency. Where the agency is still continuing however the period of limitation will commence from the date of demand for account and refusal which is the basis of the cause of action. Rendition of account does not mean a mere physical handing over of the books of account by the agent to the principal.

K. S. Desikan and *K. Raman*, for Appellant.

R. Srinivasavaradan and *R. S. Venkatachari*, for Respondent.

R.M. *Appeal dismissed.*

Srinivasan, J.
7th April, 1961.

Minakshisundara Gramani *v.*
Ramachandra Mudaliar.
C.R.P. No. 110 of 1960.

Madras Indebted Agriculturists (Repayment of Debts) Act (I of 1955), *section* 4 (1) *and* (7) *and Civil Procedure Code (V of* 1908), *section* 48 (1) (b)—*Effect on period of limitation.*

Since by reasons of section 4 (1) of the Madras Indebted Agriculturists (Repayment of Debts) Act, 1955, a decree of Court gets converted into a decree for payment of the amount in instalments on specified dates and it is deemed under sub-section (7) to be a subsequent order of Court directing payment of money on specified dates the period of limitation for purposes of section 48 of the Civil Procedure Code in such cases will have to be computed in respect of the instalments in default.

S. V. Rama Ayyangar, for Petitioner.

T. R. Kothandarama Mudaliar, for Respondent.

R.M. *Petition dismissed.*

Srinivasan, J.
14th April, 1961.

Ganapathi Pillai *v.*
Irudayaswami Nadar.
C.R.P. No. 230 of 1960.

Contract Act (IX of 1872), *section* 70—*Claim for compensation on* quantum meruit *for work done—Basis of—Express pleading—If necessary.*

Relief under section 70 of the Contract Act can be given even if the party seeking the relief has based his claim on an express agreement in that regard and has failed to establish the same. The basis of the statutory relief is that where a party to a contract has rendered service to another, not intending to do so gratuitiously and the other person had obtained some benefit, the former is entitled to compensation for the value of the services rendered by him.

A.I.R. 1944 Mad. 344; A.I.R. 1951 Nag. 431, doubted.

(1961) 1 M.L.J. (N.R.C.) 30, referred.

T. R. Srinivasan, for Petitioner.

G. Ramasami and *S. M. Subramanyam*, for Respondent.

R.M. *Petition allowed.*

Ramakrishnan, J. Murugesan *v.* Collector of Madras.
19th April, 1961. W.P. No. 45 of 1961.

Madras Land Enforcement Act (III of 1905), *section* 15-*A and Madras City Tenants' Protection Act (III of* 1922)—*Applicability—Eviction of tenants in occupation of Government land after the expiry of the lease or termination of the tenancy.*

Section 15-A of the Madras Land Encroachment Act, 1905, inserted by the Amendment Act of 1960, specifically provides that persons remaining in possession of Government land after the expiry of the lease granted to them or the termination of the tenancy, shall be deemed to be in unauthorised occupation of such land and will be liable to be evicted by the coercive process under section 6 of the Act. The Madras City Tenants' Protection Act could have no application to lands owned by the Government under the well-known and accepted principle of common law that the rights of the Crown in respect of the disposal of its land cannot be affected by any statute or rule of law.

Messrs. Row and *Reddy,* for Petitioner.

The Advocate-General (*V. K. Tiruvenkatachari*), The Additional Governmen Pleader (*M. M. Ismail*) and *V. V. Raghavan,* for Respondent.

R.M. *Petition dismissed.*

Ramachandra Iyer, J. Rajammal *v.* Chinnakkannu.
20th April, 1961. C.R.P. No. 1626 of 1959.

Madras Cultivating Tenants' Protection Act (XXV of 1955), *section* 4-*A* (1) *and* (3) —*Construction of.*

Interpretation of Statutes—Same expression in different sections or sub-sections of a Statute —When could be given an extended or restricted meaning to avoid absurd or unjust results.

A literal interpretation of section 4-A (3) of the Madras Cultivating Tenants' Protection Act, 1955, giving the same meaning to the term 'cultivating tenant' as in sub-section (1) of the section would render nugatory the very provisions of the section and the right conferred on the landlord and the machinery set up to enforce the right. A literal reading of sub-section (3) of section 4-A would mean that a tenant can defeat the beneficient provisions of sub-section (1) by offering to pay the contractual rent and the officers under the Act will have to exercise their jurisdiction only at the whim and caprice of the tenant. Hence the term 'cultivating tenant' in section 4-A (3) will have to be given a more restricted meaning, *viz.*, those who will be entitled to the benefit of the Madras Cultivating Tenants (Fixation of Fair Rent) Act (XXIV of 1956). It is only by adopting such a restricted construction of the term in the sub-section that the repugnancy could be avoided. On the basis of this interpretation the combined effect of sub-sections (1) and (3) of section 4-A of the Act will be :

(*a*) a landlord owning less than 5 acres of land can resume under section 4-A (1) of the Act half the lands leased out to a tenant if he requires the same *bona-fide* for personal cultivation.

(*b*) If the tenant in such a case happens to be one who cultivates less than 6-2/3 acres either as owner or as a tenant or both, he can successfully resist the landlord's application under sub-section (3) of section 4-A by offering to pay the contractual rent for half the portion of land sought to be resumed. He will have the benefit of the Fair Rent Act only for the other half.

(*c*) If the tenant is not entitled to the benefits of the Fair Rent Act, 1956, the statutory right of the landlord under sub-section (1) of section 4-A of the Cultivating Tenants' Protection Act, 1955, will have to be given effect to. That means a cultivating tenant who enjoys more than 6⅔ acres of land and is as such outside the scope of the Fair Rent Act, 1956, cannot resist a landlord's application under section 4-A (1) of the Cultivating Tenants' Protection Act, 1955, by offering to pay rent as contemplated by section 4-A (3).

(Scheme of the Act analysed—Object of the legislation and interpretation of statutes explained.)

Where a literal adherence to the words in an enactment would result in absurdity or inconvenience or injustice so as to amount to a repugnance to the statutory intention, and the words used are capable of a more restricted interpretation as well, the Court can adopt a more limited construction of the statute than what the words in their ordinary significance would connote. For this purpose it would be necessary to see (1) whether the language employed in the statute would be capable of a restricted interpretation and (2) whether the intention of the Legislature is clear to show that it must have intended only the restricted interpretation of the provisions.

(Case-law and texts referred—Rule explained).

R. Venkatachalam, for Petitioner.

V. Venkatesan and *C.F. Louis*, for Respondent.

R.M. ———— *Petition allowed.*

Ramachandra Iyer, J. Narayanan *v.* Collector of Customs, Madras.
20th April, 1961. W.P. No. 1045 of 1958.

Import Control Order (1955) *and Sea Customs Act* (*VIII of* 1878), *section* 30—*Limiting factor for purpose of clearance through customs—Licence of a specified value—Goods imported really worth more but imported at lesser price under the contract between the parties—Contract price within the limit prescribed under the licence—Customs authorities if could adopt the value under section* 30 *of the Sea Customs Act.*

In cases of licences issued under the Import Control Order, 1955, the limiting factor for purposes of clearance through customs is the value of the goods imported, which is the approximate C.I.F. value. Where the C.I.F. value is within the limit permitted under the license the importer has a right to import the goods under his license. It is no doubt true that in cases where the invoice price is a camaflouge to hide the real price it will be open to the Import Control Authorities to ascertain the real price of the goods. But where the price is really what is agreed under the Contract between the parties, the mere fact that the importer got the goods at a bargain price will not enable the authorities to fix the price of the goods imported on the basis of section 30 of the Sea Customs Act. If a seller is willing to sell his goods for considerably low value than its market price the C.I.F. price cannot be said to be anything other than what is stipulated by the parties as the price.

P. S. Balakrishna Ayyar and *P. S. Ramachandran*, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. ———— *Rule absolute.*

Srinivasan, J. Venkatarama Iyer *v.* Asaan Mohd. Rowther.
21st April, 1961. C.R.P. No. 2099 of 1959.

Madras Cultivating Tenants' Protection Act (*XXV of* 1955), *sections* 3 *and* 4—*Cultivating tenant sub-leasing the lands—Whether outside the Act.*

Under section 3 (2) (*b*) of the Madras Cultivating Tenants' Protection Act, if a tenant sub-leases the land he is liable to eviction under section 4 (*a*) and (*b*) of the Act for that very reason. The mere fact that the tenants has ceased to cultivate the lands by reason of such sub-lease, does not mean that he goes outside the scope of the operation of section 4 (*a*) and (*b*).

A. Ramanathan, for Petitioner.

S. Mohan and *T. Satyadev*, for Respondent.

R.M. ———— *Petition allowed.*

Rajamannar, C.J., and Kailasam, J.
4th May, 1961.

Sha Rikabdoss *v.*
Collector of Customs, Madras.
W.A. No. 137 of 1960.

Imports Control Order (1955)—*Electrical insulation material—Separate classification of material as adhesive tape and black insulating tape—If could be deemed to be the same.*

Though it is true that there could be no estoppel precluding the customs authorities from ever correcting a mistaken view taken by them in classifying certain goods under one head or the other, still where there has been a classification of certain goods as 'adhesive tape' and 'black insulating tape'. which are treated as separate and distinct and which has been so understood by the importer, the trade and the authorities, it is not open to the authorities to put the 'black insulating tape' into the category of 'adhesive tape' even assuming that the black insultating tape has an adhesive quality. Such goods cannot be taken out of its category simply because it has an adhesive quality and may fall within the other classes of adhesive tape.

V. C. Gopalaratnam for *L. V. Krishnaswami Ayyar,* for Appellant.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Appeal allowed.*

Ramachandra Iyer, O.C.J., and Ramakrishnan, J.
21st June, 1961.

Desikachari *v.*
Associated Publishers, Ltd.
W.P. Nos. 169 to 171 of 1961.

Industrial Disputes Act (*XIV of* 1947), *sections* 2 (oo) *and* 25-*E and Working Journalists* (*Conditions of Service*) *and Miscellaneous Provisions Act* (*XLV of* 1955), *section* 5—'*Retrenchment*'—*Retirement on attaining the age of superannuation—When retrenchment.*

Under the definition of the term 'retrenchment' in section 2 (*oo*) of the Industrial Disputes Act, even a retirement from service will be a retrenchment unless the retirement is voluntary or the contract of service provides for the age of retirement. The word 'retire' in its reflexive use would mean 'to remove from service,. A mere submission of the employee to the termination of service by the employer cannot be said to be a voluntary act of the former. A voluntary retirement is the act of the employee. The mere fact that the management postponed the operation of their order by a few months as an act of grace, which the employee accepted, could not mean that the employee has agreed to retire after that period so as to make his retirement voluntary. If what has been done is a retrenchement, the mere fact that the management omitted to follow the procedure prescribed by section 25-F of the Act cannot make it any the less a retrenchment, though such irregularity in procedure might give the employee concerned a right to question the validity of the order in appropriate proceedings. The order will not become *non-est* and where the employee has accepted the order as a retrenchment he must proceed on the basis of the factual existence of the order.

Where the Labour Court misconstrues the provisions of section 2 (*oo*) of the Industrial Disputes Act and refuses to apply the provisions of section 25-F of the Act as a result thereof, it amounts to an error of law apparent on the face of the record and the order is liable to be quashed under Article 226 of the Constitution.

The Advocate-General (*V. K. Tiruvenkatachari*) and *R. G. Rajan,* for Petitioner.

R. Ramamurthi Ayyar and *T. S. Rangarajan,* for Respondent.

R.M. *Rule absolute.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, and J. C. Shah, JJ.
17th July, 1961.

Mahabir Prasad Khemka *v.* The Commr. of Income-tax, West Bengal.
C.A. Nos. 347 and 350 of 1960.

Constitution of India (1950), *Article* 136—*Competence of appeal—Scope.*

In our opinion, no special circumstances exist, on which the appellants can claim to come to this Court against the decision of the Tribunal, by passing the decision of the High Court on the question referred and the refusal of the High Court to call for a statement of the case from the Tribunal on questions which the Tribunal refused to refer to the High Court. The appeals are, therefore, within the rulings of this Court in *Chandi Prasad Chokani* v. *State of Bihar* (Civil Appeals Nos. 170 to 172 of 1959 decided on 24th April, 1961) and *Indian Aluminium Co., Ltd.* v. *Commissioner of Income-tax* (Civil Appeal No. 176 of 1959 decided on 24th April, 1961), and must be regarded as incompetent.

N. C. Chatterjee and *A. V. Viswanatha Sastri,* Senior Advocates (*D. N. Mukherjee,* Advocate with them) for Appellants.

K. N. Rajagopal Sastri, Senior Advocate, (*D. Gupta,* Advocate, with him) for Respondent.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

S. K. Das, M. Hidayatullah, and J. C. Shah, JJ.
18th July, 1961.

Commissioner of Income-tax, Bombay, City II *v.* Shankuntala.
C. As. Nos. 125, 231 and 447 of 1960.

Income-tax Act (*XI of* 1922)—*Sections* 18 (5) *and* 23-*A*—*Scope.*

The question referred to the High Court was "Whether the dividend income of Rs. 54,307 is to be assessed in the hands of the assessee, the Hindu undivided family ?"

Applying its earlier decision in *Howrah Trading Co., Ltd.* v. *Commissioner of Income-tax, Central Calcutta,* (1959) S.C.J. 1133 : (1959) 36 I.T.R. 215), the Court held that no valid reason existed as to why the expression 'share-holder' as used in section 18 (5) should mean a person other than the one denoted by the same expression in the Indian Companies Act, 1913. "Similarly, we see no reason why the expression ' share-holder ' in section 23-A should not have the same meaning, namely, a share-holder registered in the books of the company. It would be anomalous if the expression 'share-holder' has one meaning in section 18 (5) and a different meaning in section 23-A of the Act ; for that would mean that a Hindu undivided family treated as a share-holder for the purpose of section 23-A would not be entitled to the benefit of section 18 (5) of the Act.

The position of a Hindu undivided family vis a-vis a partnership was considered by this Court in *Charandas Haridas* v. *Commissioner of Income-tax, Bombay,* (1960) 39 I.T.R. 202 : (1960) S.C.J. 929 ; *Commissioner of Income-tax, Bombay* v. *Nandlal Gandalal* (1961) 1 S.C.J. 342 : (1960) 40 I.T.R. 1.

K. N. Rajagopal Sastri, Senior Advocate, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondents.

G.R. *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. N. Wanchoo and K. C. Das Gupta, JJ.
24th July, 1961.

The State of Andhra Pradesh *v.* Thadi Narayana.
Cr. App. No. 112 of 1961 and Cr. App. No. 222 of 1959.

Criminal Procedure Code (*V of* 1878), *sections* 236 *to* 238, 423, 403 *and* 439—*Scope.*

In our opinion therefore, the power conferred by section 423 (1) (*b*) (i), Criminal Procedure Code, is intended to be exercised in cases falling under sections 236 to 238

of the Code. We would accordingly hold that the power conferred by the expression " alter the finding " does not include the power to alter or modify the finding of acquittal. The finding specified in the context means the finding as to conviction, and the power to alter the finding can be exercised in cases like those which we have just indicated.

Relying upon its earlier judgment (1956) S.C.J. 150 : (1956) 1 M.L.J. (S.C.) 92 : (1955) 2 S.C.R. 1049 the Court observed " there is nothing about the transposition of the sentence under section 423 (1) (*b*). It only provides for altering the finding and maintaining the sentence, and that can apply only to cases where the finding of guilt under one section is altered to a finding of guilt under another. The section makes a clear distinction between a reversal of a finding and its alteration. These observations seem to take the same view of the scope and effect of the provisions of section 423 (1) (*b*) as we are inclined to do."

In the result Criminal Appeal No. 112 of 1961 preferred by the respondent Thadi Narayana is allowed and the High Court's order passed in Criminal Appeal No. 237 of 1957 by which case against her had been sent back for retrial on the original charges against her under sections 302 and 392 of the Indian Penal Code is set aside. The consequence of this decision is that the order of acquittal passed in her favour by the trial Court in respect of the said offences is restored. The State has not preferred any appeal against the High Court's decision in Criminal Appeal No. 237 of 1957 whereby the conviction of Thadi Narayana in respect of the offence under section 411 and sentence imposed on her in that behalf have been set aside while ordering her retrial for the major offences under sections 302 and 392 of the Indian Penal Code ; and so this latter order of acquittal in respect of section 411 will stand. In the circumstances of this case this result cannot be avoided. Criminal Appeal No. 222 of 1959 preferred by the State against the decision of the Full Bench therefore fails and is dismissed.

K. R. Chaudhuri and T. M. Sen, for Appellant in C.A. No. 222 of 1959 ; and Respondent in C.A. No. 112 of 1961.

P. Ram Reddy, Advocate, for Appellant in C.A. No. 112 of 1961 and Respondent in C.A. No. 222 of 1959.

G.R.

Criminal Appeal No. 112 *of* 1961 *allowed Criminal Appeal No.* 222 *of* 1959 *dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao, M. Hidayatullah, J. C. Shah and Raghubar Dayal, JJ.
26*th July,* 1961.

Indore Iron and Steel Registered Stock-Holders' Association (Private) Ltd. *v.* The State of Madhya Pradesh (in both the appeals).
C.A. Nos. 509 and 510 of 1960.

Madhya Bharat (now Madhya Pradesh) Sales Tax Act (XXX of 1950)*—Essential Goods Declaration and Regulation Act (LII of* 1952) *(Central)—Articles* 283 *and* 372 *of the Constitution of India.*

The question about the construction of Article 286 (3) of the Constitution of India (1950) has been considered by this Court on two occasions. In *Sardar Soma Singh and others* v. *The State of Pepsu and Union of India*, (1954) S.C.J. 393: (1954) S.C.R. 955): S. R. Das, J., as he then was, who spoke for the Court has observed that it is quite clear that section 3 of Act LII of 1952 does not affect the Ordinance there challenged for the said Ordinance was not made after the commencement of the Act, and that Article 286 (3) contemplates a law which can be but has not been reserved for the consideration of the President and has not received his assent. This position clearly points to post-constitutional law for there can be

no question of an existing law continued by Article 372 being reserved for the consideration of the President for receiving his assent. This decision supports the conclusion that the law contemplated by the first condition specified in Article 286 (3) must be post-constitutional law. To the same effect are the observations made in the majority judgment of this Court in *Firm of A. Gowrishankar* v. *Sales Tax Officer, Secunderabad and another*, A.I.R. 1958 S.C. 883.

A. V. Viswanatha Sastri and *C. B. Agarwala*, Senior Advocates (*A.G. Ratnaparkhi*, Advocate, with them) for the Appellant (in both the appeals).

R.J. Bhave, Government Advocate for the State of Madhya Pradesh, *I.N. Shroff*, Advocate, with him) for the Respondents (in both the appeals)

G.R. ——— *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao, M. Hidayatullah. J. C. Shah and Raghubar Dayal, JJ.
8th August, 1961.

M/s. Ram Chand Jagadish Chand *v.* Union of India.
W.P. No. 1 of 1960.

Imports and Exports (Control) Act, 1947, *section* 3—*Section* 19 *of the Sea Customs Act*—*Articles* 14 *and* 19 *of the Constitution of India.*

The fundamental right of a citizen to carry on any occupation, trade or business under Article 19 (1)(*g*) of the Constitution is not absolute; it is subject to reasonable restrictions which may be imposed by the State in the interests of the general public. The right of the State to impose controls in the larger interest of the general public on imports has accordingly not been denied : nor has the authority of the State to issue the Imports (Control) Order, 1955, in exercise of the powers conferred by the Imports and Exports (Control) Act providing for imposition of restrictions by permitting import of certain goods only in accordance with licences or customs permits granted by the Central Government, been challenged.

If there was evidence to show that in respect of other persons who were in the opinion of the committee found also to have inflated the prices in the manner adopted by the petitioners and still the Controller has granted import licences to those persons for the full amount of the export value or a percentage substantially in excess of the percentage for which import licence was granted to the petitioners, a case of discrimination could have been made out ; but in the absence of such evidence, we do not think that any case of discrimination is made out.

A.V. Viswanatha Sastri, Senior Advocate, *K. K. Jain* and *Ganpat Rai*, Advocates, for Petitioner.

C. K. Daphtary, Solicitor General of India and *R. H. Dabhar*, Government Advocate, for Respondents.

G.R. ——— *Petition dismissed.*

Ramachandra Iyer, J.
24th March, 1961.

Zaherunnissa Begum *v.* Mohd. Ali.
C.R.P. No. 2117 of 1959.

Madras Court-fees and Suits Valuation Act (*XIV of* 1955), *section* 70—*Refund*—*Scope of*—*Mistake*—*What is.*

Section 70 of the Madras Court-fees and Suits Valuation Act, 1955, is mandatory and provides for refund of Court-fee whenever it is paid by mistake or inadvertence. Being a beneficial provision there is no warrant for restricting its applicability to mistakes other than mistakes of procedure. A mistake which arises as a result of the adoption of an erroneous procedure with the consequent payment of Court-fee appropriate to that procedure will be covered by the term 'mistake' under the section and a refund could be ordered.

Where a suit is filed by mistake in a case which requires only a petition under section 47 of the Civil Procedure Code it is a mistake within the meaning of section 70 of the Court-fees Act meriting an order for refund.

D. R. Krishna Rao and *I. Chakrapani*, for Petitioner.

The Government Pleader (*A. Alagiriswmy*), for Respondent.

R.M. ——— *Petition allowed.*

[Full Bench.]

Ramachandra Iyer, Jagadisan and Srinivasan, JJ.
30*th March*, 1961.

S. R. Rajender *v.* N. S. Govindier.
A. A. O. No. 51 of 1961.
C. R. P. No. 515 of 1958.

Madras City Tenants' Protection Act (III of 1922) *(as amended by Madras Act XIX of* 1955), *section* 8—*Construction—Order fixing rent under section* 7-*A—Appealability.*

An appeal lies from an order fixing reasonable rent under section 7-A of the Madras City Tenants Protection Act, 1922, as amended by Madras Act XIX of 1955.

The criterion for determining the maintainability of an appeal is the character of the decision under appeal and not whether the proceedings in which the decision was given originated on a plaint or an application. The Court would be governed by the ordinary rules of procedure and an appeal would lie from orders, if authorised by the existing rules.

(1939) 1 M.L.J. 80 : I.L.R. (1939) Mad. 213, overruled.

L.R. (1913) A.C. 546 ; (1948) 1 M.L.J. 41 ; L.R. 74 I.A. 264 : I.L.R. (1948) Mad. 505 (P.C.) and (1959) 1 M.L.J. 181, followed.

I.L.R. 17 Lah. 146, relied on.

As the order is appealable no revision lies against such an order.

T. R. Ramachandran, for Appellants.

R. Viswanathan for *S. Gopalratnam*, for Respondents.

P.R.N. ——— *C.M.S.A. allowed and C.R.P. dismissed.*

Rajagopalan and Srinivasan, JJ.
4*th April*, 1961.

Zamindar of Ettiyapuram *v.* Collector of Tirunelvelli.
S. T. A. No. 35 to 122 of 1958.

Madras Estates Land Act (I of 1908), *section* 3 (2) (a) *and* (d)—*Estate—Grant—Construction of.*

A grant made several decades back must necessarily receive its interpretation in the light of the surrounding circumstances and contemporaneous events that were operative then and which led to the grant. The incidents attaching to an estate under an original grant may become altered by reason of a re-grant, which the Government was entitled to make and it is not a rule of law that in every case the terms of the original grant alone should govern the incidents of the tenure. While the Permanent Settlement did not purport to interfere with the character of an estate, *viz.*, the rights of the holder of the estate *vis-a-vis* the members of his family, it is competent to the Government when it chose to make a grant to impose special terms and conditions to regulate the obligations between itself and the holder of the estate.

In order to constitute a grant in inam the mere use of the expression 'inam' or 'gift' is wholly inconclusive unless along with such expression there is an indication that the grantee was to enjoy the land either totally free of rent or to have partial remission of the Government share of the revenue.

V. Venkatachari and *T. Rengaswamy Iyengar*, for Appellant.

The Advocate-General (*V. K. Tiruvenkatachari*) and The Government Pleader (*A. Alagiriswamy*), for Respondent.

R.M. ——— *Appeals dismissed.*

Ramachandra Iyer, J.
21st April, 1961.

Abdul Razack *v.* Mohd. Shah.
C.R.P. No. 1338 of 1960.

Civil Procedure Code (*V of* 1908), *Order* 1, *rule* 10—*Power to implead parties*—*Scope of.*

A party can be impleaded under Order 1, rule 10, Civil Procedure Code, only when he is a necessary or a proper party. A person claiming an adverse title to the estate of the deceased would neither be a necessary nor a proper party in a suit for administration of the estate. Such parties can institute their own suit for protection of their rights and they cannot get their claims adjudicated in a suit by a plaintiff for administration.

S. Kothandarama Nayanar, for Petitioner.

K. Hariharan and *P. Viswanathan,* for Respondent.

R.M. ——— *Petition allowed.*

Ramachandra Iyer, J.
21st April, 1961.

Village Panchayat of Vaitheeswaran Koil *v.*
Silasri Subramania Desiker.
C.R.P. Nos. 577 and 578 of 1960.

Madras Village Panchayats Act (*X of* 1950), *section* 78—*Contribution from temples, etc., to Panchayat*—*When could be claimed.*

Under section 78 of the Madras Village Panchayats Act, 1950 it is for the Government to decide upon and direct the payment of contribution to the funds of the Panchayats. A panchayat has no right to claim any contribution in the absence of an order of the State Government to that effect under section 78 of the Act. Such a contribution cannot be deemed to be a fee and it is not saved by Schedule II, rule 12 of the Act. The mere fact that contributions were paid before the Act, will not make the temple liable to pay the contribution after the coming into force of the Act unless the statutory provisions are complied with.

G. Ramanujam, for Petitioner.

T. M. Chinnaiya Pillai and *T. S. Palani Sivagurunathan,* for Respondent.

R.M. ——— *Petition dismissed.*

Ramachandra Iyer and
Ramakrishnan, JJ.
5th May, 1961.

Kannan Lorry Service *v.*
Nataraja Motor Service.
W.P. Nos. 1295 and 1296 of 1960.

Motor Vehicles Act (*IV of* 1939), *sections* 44 *and* 45—*Construction and scope*—*Jurisdiction to entertain and dispose of applications for permit*—*Notification inviting applications for grant of stage carriage permit for route within the jurisdiction of specified Regional Transport Authority*—*Forum for application*—*Place of residence or principal place of residence of applicant*—*Relevancy.*

The crucial test in regard to the power of a Regional Transport Authority to entertain and dispose of applications for the grant of a permit under section 45 of the Motor Vehicles Act is whether the route notified is exclusively within his jurisdiction. It is immaterial whether the applicant for a permit, after he gets the permit for that route, desires to apply to the Regional Transport Authority of another region, for counter-signature of that permit under section 63 (1) of the Act to enable him to ply the vehicle in the jurisdiction of the latter Authority. The place or residence, or the principal place of business, of the applicant for a permit, is relevant only for the purpose of defining the forum of the application when the route is an Inter-District route or an Inter-State route. But it does not affect the jurisdiction of the Authority to grant the permit, provided the application is properly made to him in regard to a route that lies exclusively within his jurisdiction and for which his powers are conferred under section 44 of the Motor Vehicles Act.

Provisos (1) and (2) to section 45 of the Act have no application to a case where the route notified is neither an Inter-District route nor an Inter-State route ; it is only the main part of section 45, which would apply, as it is that provision which gives jurisdiction to the Regional Transport Authority of the region in which it is proposed to use the vehicle or vehicles to entertain and dispose of applications for a permit.

Effect of Rule 153-A, Motor Vehicles Rules stated.

W.P. Nos. 786 and 787 of 1953, applied.

W.P. Nos. 497 and 102 of 1952, considered.

S. Mohankumaramangalam, M. N. Rangachari and *S. Palaniswami, K. K. Venugopal* and *B. R. Dolia,* for Petitioners.

The Advocate-General (*V. K. Thiruvenkatachari*), *T. A. Bhyme,* and *N. G. Krishna Ayyangar,* for Respondents.

P.R.N. ——— *Rules made absolute.*
Petitions allowed and orders quashed.

Srinivasan, J. Gnanaprakasam *v.* Mahboob Ali.
5th May, 1961. C.R.P. No. 1598 and 1600 of 1959.

Madras City Tenants Protection Act (III of 1922)*—Amendment Act XIII of* 1960—*—Applicability—Section* 9-*A—When could apply to pending proceedings.*

Interpretation of statutes—Retrospective effect of amendment—Object of legislation—If relevant.

The right of appeal granted under section 9-A of the Madras City Tenants, Protection Act, introduced by the Amending Act of 1960, would apply to all pending proceedings. The pendency of a revision petition in the High Court would make the proceedings pending within the meaning of the section. Though normally a statute should not be regarded as having retrospective effect unless expressly made so or by necessary implication, the expropriatory effect of a legislation should be taken into consideration in deciding whether the amendment should be applied or not to any pending proceedings. Having regard to the policy and the object of the City Tenants' Protection Act, whatever right is conferred on the tenant must be limited to the extent necessary to effectuate that purpose. Hence the right of appeal under section 9-A of the Act and the amended provisions of section 9 of the Act would apply to all pending proceedings.

T. R. Venkataraman, for Petitioner.

M. A. Srinivasan, A. Abdur Rahim and *Mahaboob Alikhan,* for Respondents.

R.M. ——— *Petition allowed.*

Srinivasan, J. Madurai Municipality *v.* Abdul Razack.
12th July, 1961. Crl. Appeal No. 106 of 1960.

Madras District Municipalties Act (V of 1950), *sections* 175 *and* 347, *Proviso—Offence under section* 175*—If a continuing offence—Limitation for prosecution.*

The Proviso to section 347 of the Madras District Municipalities Act specify categorically certain offences as continuing offences and provides a longer period of limitation for prosecution for such offences. A scrutiny of the proviso shows that only those enumerated types of offences are treated as continuing offences and not others. An offence of non-compliance with the provisions of section 175 of the Act cannot be a continuing offence and a prosecution for such failure should be instituted within three months of the sale complained of.

K. S. Ramamurthi and *T. R. Mani,* for Petitioner.

The Public Prosecutor, for State.

V. Venkatesan, for Accused.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer and Kunhamed Kutti, JJ.
5th May, 1961.

Malli Selva Iyer *v.*
Madurai Mercantile Bank, Ltd. (In Liquidation).
C.R.P. Nos. 7 and 225 of 1957.

Banking Companies Act (X of 1949), *section* 45-*B—Applicability to claim petitions.*

Section 45-B of the Banking Companies Act provides that the High Court shall have exclusive jurisdiction to entertain and decide any claim made by or against a Banking Company which is being wound up. A claim petition under Order 21, rule 58, Civil Procedure Code which is merely incidental to the main execution proceedings could be entertained by the Court which entertained the execution petition and section 45-B could not apply to such cases. But where a claim petition is disposed of and a suit has been filed under Order 21, rule 63 of the Code it will be an independent proceedings and section 45-B of the Banking Companies Act will apply to such proceedings.

M. Natesan, for Petitioner in C.R.P. No. 7 of 1957.

A. V. Narayanasami Ayyar, for Respondent in C.R.P. No. 225 of 1957 and C.R.P. No. 7 of 1957.

T. P. Gopalakrishnan and *K. S. Varadachari,* for Petitioner in C.R.P. No. 225 of 1957.

R.M.

Petition allowed.

Ramachandra Iyer, O.C.J.
20th June, 1961.

Ramalingam Chettiar *v.*
Vulcan Trading Company (P), Ltd.
C.R.P. No. 818 of 1960.

Arbitration Act (X of 1940), *section* 34*—Stay of proceedings—Scope of.*

An arbitration clause in a contract is a matter of agreement between the parties and before the applicability of the clause is decided it should be ascertained whether there is a contract, and if so what are its terms. Where there is no binding contract between the parties there could be no agreement to arbitrate, which is part of it. Where the question whether the respondent was a party to the contract at all is in issue, it is not a matter falling under section 34 of the Arbitration Act. Moreover the question of granting stay under section 34 is one of discretion of the Court and where it is found that the arbitration clause contemplates reference to arbitration in a foreign country and it will be inequitable to insist on the parties going to a foreign country to settle the dispute the discretion of the Court will not be exercised in favour of staying the suit.

G. N. Chari, for Petitioner.

K. Radhakrishnan and *M/S John* and *Row,* for Respondent.

R.M.

Petition allowed.

Ganapathia Pillai and Kailasam, JJ.
23rd June, 1961.

Abdul Shukoor & Co. *v.*
Madras Hides and Skins Exporters, Ltd.
C.C.C. A. No. 75 of 1957.

Practice—Pleadings—Endorsement made by the counsel on the plaint when returned for rectification of certain defects—If part of the pleadings.

An endorsement made by an advocate on the plaint when the same is returned for rectification of certain defects does not add to the pleadings in the case and cannot stand on the same footing as a pleading verified.

V. T. Rangaswami Ayyangar and *K. Kalyanasundaram,* for Appellant.

V. Tyagarajan, and *M/S, John* and *Row,* for Respondents.

R.M.

Appeal dismissed.

M—N R C

Jagadisan, J.
27th June, 1961.

Mathavan Pillai *v.* Velayudham Pillai.
S.A. No. 702 of 1959.

Mortgage—Suit for redemption—Dismissal of—If bars a second suit for redemption.

Civil Procedure Code (V of 1908), *section* 11—*Principle of* res judicata—*If applicable to suit for redemption of mortgage.*

The right of redemption of a mortgagor or his representative or other person entitled to redeem will subsist so long as it is not lost or extinguished in a manner known to law, either by act of parties or by operation of law or by a decree of a competent Court. In a suit for redemption of a mortgage the only relevant question is whether the right to redeem subsists on the date of the suit. The mere fact that a prior suit for redemption by the mortgagor or his predecessors-in-title was dismissed without involving an extinction of the right of redemption, cannot by itself bar a second suit. But while a mere dismissal of a suit for redemption of a mortgage without an express declaration of the extinction of the mortgage right may not technically bar the institution of a second suit for redemption, the findings on all the issues in the earlier suit will operate as *res judicata* in the second suit provided the requirements of section 11 of Civil Procedure Code are fulfilled. The fact that the second suit is maintainable does not mean that the parties are at liberty to have a fresh trial on all the issues which were comprised in the first suit.

K. S. Ramamurthi and *P. Annanthakrishna Nair*, for Appellant.

T. M. Krishnaswami Ayyar and *A. Balasubramaniyam*, for Respondents.

R.M. — *Appeal dismissed; Leave granted.*

Srinivasan, J.
30th June, 1961.

Mohd. Shamved *v.* Chelambu Abdul Gaffoor.
Crl.P. No. 601 of 1961.

Madras Buildings (Lease and Rent Control) Act (XVIII of 1960), *section* 23—*Appeal—Person aggrieved—Who is.*

In order to maintain an appeal under section 23 of the Madras Buildings (Lease and Rent Control) Act, 1960, the person seeking to file the appeal should be a person aggrieved by the order under appeal. Where a person has no interest whatsoever in the subject-matter of the proceedings at the time when the proceedings were initiated cannot claim to be a person aggrieved by the order merely because he acquired certain rights during the pendency of the proceedings and the order was made against his predecessor-in-title. A person who is not a party to the rent control proceedings and who could not be a party, cannot claim to be a person aggrieved by an order passed against his vendor by reason of his purchasing the property during the pendency of the proceedings.

T. T. Srinivasan, A.N. Rangaswami and *G. C. Kanniah*, for Petitioner.

A. Sundaram Ayyar, for Respondent.

R.M. — *Petition dismissed.*

Srinivasan, J.
30th June, 1961.

Manuel, *In re.*
Crl. Rev. P. No. 187 of 1960.
Crl. Rev. C. No. 188 of 1960.

Madras Prohibition Act (X of 1937), *section* 4-*A—State of intoxication—What amounts to.*

In order to sustain a prosecution under section 4-A of the Madras Prohibition Act, it should be established that the accused was in a state of intoxication, *viz.*, a total or partial lack of control over himself. Red eyes or gruff voice may sustain a charge under section 4 (1) (*j*) but not under section 4-A of the Act.

N. Natarajan and *R. Shanmugam*, for Petitioner.

The Public Prosecutor, for State.

R.M. — *Petition allowed.*

Ramakrishnan, J.
11th July, 1961.

Sivasubramaniam, *In re.*
Crl. Rev. Case No. 990 of 1960.
Crl. Rev. Pet. No. 959 of 1960.

Criminal Procedure Code (*V of* 1898), *section* 207-*A—Scope of.*

The use of the words 'no ground for committing the accused for trial' in section 207-A of the Criminal Procedure Code does not mean that even a slight evidence or the smallest ground should lead to a committal and only a total absence of any evidence whatsoever could alone lead to a discharge order. The language of section 207-A does not mean anything more or less than what is provided in sections 210 to 213 of the Criminal Procedure Code. The tests of *prima facie* case and reasonable evidence are as much applicable under section 207-A as under section 210 of the Code.

S. Mohankumaramangalam and *S. Palaniswami,* for Petitioner.

M. Narayanamurthy for the Public Prosecutor, for State.

R.M. *Petition dismissed.*

Veeraswami, J.
14th July, 1961.

Pannalal Gupta *v.* State of Madras.
W.P. No. 218 of 1959.

Madras Buildings (*Lease and Rent Control*) *Act* (*XXV of* 1949), *section* 13—*Power of exemption under—Scope of.*

The *bona fide* requirement of a landlord of a non-residential building for his own occupation is a ground well within the scope of section 13 of the Madras Buildings (Lease and Rent Control) Act, 1949 and in particular circumstances if the Government are satisfied that the justice of the case, including relieving hardship or unreasonable severity or rigour in the application of the provisions of the Act requires it they may legitimately and properly grant exemption on such grounds under the said section.

(Case-law reviewed—Principles stated).

P. V. Subramanayam, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), *K. V. Venkatasubramaniya Ayyar, T. R. Sundaram* and *C. Devarajan,* for Respondents.

R.M. *Petition dismissed.*

Ramakrishnan, J.
19th July, 1961.

Vellaiswamy, *In re.*
Crl. Appeal No. 4 of 1960.

Madras Prohibition Act (*X of* 1937), *section* 29—*Failure to follow the procedure under—Effect.*

Non-compliance with the formalities prescribed by section 29 of the Madras Prohibition Act before effecting a search cannot *per se* prevent the discovery of a fact during the search from being used for basing a conviction.

A. Nagarajan and *A. Visvanathan,* for Appellant.

The Public Prosecutor, for State.

R.M. *Sentence modified.*

Ramakrishnan, J.
19th July, 1961.

Karuppa Chetty, *In re.*
Crl. R.C. No. 759 of 1960.
Crl. R.P. No. 731 of 1960.

Madras Village Panchayats Act (*X of* 1950), *section* 106—*Sanction under—When necessary.*

Where a Member of a Panchayat has been discharging the duties of the President of the Panchayat under section 25 (3) of the Madras Village Panchayats Act

1950, a prosecution against such a person for an offence under section 116 (3) of the Act can be launched only after obtaining the requisite sanction under section 106 of the Act. Even though such a person might have ceased to be the temporary President at the time of the launching of the prosecution, still, if he is a member of the Panchayat at that time sanction under section 106 will be necessary.

(Case-law reviewed).

K. V. Sankaran and *S. K. Rajavelu*, for Petitioner.

The Public Prosecutor, for the State.

R.M. *Petition allowed.*

Ramakrishnan, J.
21st July, 1961.

Dakshinamurthy *v.* Corporation of Madras.
Crl. R. C. No. 347 of 1960.
Crl. R. P. No. 339 of 1960.

Madras City Municipal Act (IV of 1919), *Schedule IV, rules* 20 *to* 22—*Procedure under —Duty to observe.*

Rules 20 to 22 of Schedule IV of the Madras City Municipal Act provide the procedure to be adopted before a prosecution for non-payment of property tax can be launched. Where the distress warrant was returned with the endorsement that distraint was impracticable as the defaulter's articles were mixed with those of others, but the evidence was that no articles of the defaulter were found on the premises the accused should be given the benefit of the doubt and it cannot be held that the Municipality has established that distraint of movables was found impracticable.

A. S. Raman and *R. K. Tatachari*, for Petitioner.

T. A. Ramaswami Reddy, for Respondent.

M. Narayanamurthy for the Public Prosecutor, for State.

R.M. *Petition allowed.*

[FULL BENCH.]
Rajagopalan, O.C.J., Ramachandra Iyer, Veeraswami, Srinivasan and *Kunhamed Kutti, JJ.*
28th July, 1961.

Venkatesa Sastri *v.* Chidambara Sastri.
O.S.A. Nos. 65, 70 to 74 of 1956.

Transfer of Property Act (IV of 1882), *sections* 3, 59 *and* 100—*Attestation of document —' Attested '—Meaning of—Registering Officer when could be deemed to be attesting witness.*

Registration Act (XVI of 1908), *sections* 58 *and* 59—*Endorsement of registering officer under—When could be deemed to be attestation of the document—Words and phrases—' Attested ' —Meaning of.*

Ordinarily attesting witness to a deed is one who sees the execution of the deed and signs it, and being an act of the witness testifying to the genuineness of the signature of the executant, he should have the necessary intention to do so. But under the definition of the word " attested " under section 3 of the Transfer of Property Act as it stands now, there could be a valid attestation even in cases where the witness has not personally witnessed the execution of the deed but has received from the executant a personal acknowledgment of his signature to the deed. But even

in such cases before a witness to a document can be held to be an attesting witness to it he should have the *animus* to attest. A person could however be proved to be an attesting witness even though he did not describe himself as such. For it is not the designation or name that decides the question but the character that the witnesses fill. Nor is it necessary that an attesting signature should appear in any particular place in the document.

Subject to the other qualifications of an attesting witness being satisfied, a registering officer or the identifying witnesses before the registering officer who subscribe only to the registration endorsement, could also be an attesting witness to the document itself. But the mere presence of their signatures would not by themselves be sufficient to satisfy the requirements of a valid attestation. It should be shown by evidence that any or all of the persons did in fact intend to and did sign as attesting witness as well and it would be open to the parties to adduce such evidence.

I.L.R. (1952) Mad. 123 (F.B.), partly overruled.

I.L.R. 54 All. 1051, dissented from.

A.I.R. 1948 Bom. 322 and (1939) 2 M.L.J. 762 (P.C.), referred.

The signatures of the registering officer or the identifying witness as affixed to the registration endorsement under sections 58 and 59 of the Registration Act would amount to a valid attesting signatures to the document itself within the meaning of section 59 of the Transfer of Property Act if the conditions necessary for a valid attestation under section 3 of the Act have been satisfied and the persons affixing the signatures thereto had the *animus* to attest.

M. Ramachandran and *T. V. Balakrishnan*, for Appellant.

K. S. Champakesa Ayyangar, *C. Venugopalachari* and *M. Ramachandra Rao*, for 4th Respondent.

R.M. *Answer accordingly.*

Ramakrishnan, J.
8th August, 1961.

Anantharam *v.* Ramaswami.
Crl. Re. C. No. 1427 of 1959.
Crl. R. Pet. No. 1375 of 1959.

Criminal Procedure Code (*V of* 1898), *section* 403 (1)—" *Same offence* "—*If should be identical-offence under section* 75 *of the Madras City Police Act and section* 323, *Penal Code —If identical—Constitution of India* (1950), *Article* 20.

In order to attract the safeguards against double jeopardy contained in section 403 of the Criminal Procedure Code and Article 20 of the Constitution, the offence complained of in the two prosecutions should be the same, *i.e.*, identical. A mere similarity in the allegations of facts in the two complaints cannot attract the provision. An offence under section 75 of the Madras City Police Act is essentially one against the public while an offence under section 323, Penal Code, does not involve this element. The two offences are not identical though the same facts might be relied upon in both cases. Hence separate prosecutions for the two offences on the same facts will not be barred under section 403 of the Code.

R. Krishnaswamy and *Miss Lakshmi Panikker*, for accused 1 & 2 to 4.

The Public Prosecutor, for State,

K. N. Balasubramaniam and *Rangarajulla*, for Complainant.

R.M. *Petition dismissed.*

Ramakrishnan, J.
9th August, 1961.

Rajamanickam *v.* State.
Crl.Rev. C. No. 735 of 1960.
Crl.Rev. P. C. No. 707 of 1960.

Madras Prohibition Act (X of 1937), *section* 32 *need to comply with the procedure under.*

Section 32 of the Madras Prohibition Act is a safeguard provided under the statute and it is necessary that police officers who make a search and recover liquor fermented wash and the like, should comply with that statutory provision. Though in some cases omission to comply with the provision might not vitiate the trial or conviction the officers cannot treat the statutory provision as a dead letter.

C. K. Venkatanarasimhan, for Petitioner.

The Public Prosecutor, for State.

R.M. *Petition dismissed.*

Ananthanarayanan, J.
10th August, 1961.

Mahadeva Rao *v.* Yasoda Bai.
Crl.R.C. No. 791 of 1960.
Crl.R.C. No. 763 of 1960.

Criminal Procedure Code (V of 1898), *section* 488—*Presumption as to paternity of children —Birth Register extracts—When could be relied upon.*

Unless it could be established by evidence that the father of the child is himself the informant, on the basis of which information the paternity of the child is entered in the Birth Register of the local body, an extract of such birth register where the name of the informant is not filled up, cannot give raise to any presumption as to the paternity of the child in a proceeding for maintenance under section 488 of the Criminal Procedure Code.

N. Suryanarayana, for Petitioner.

The Public Prosecutor, for State.

N. Nagaraja Rao, for Respondent.

R.M. *Petition allowed.*

[SUPREME COURT.]

J. L. Kapur, K. Subba Rao, M. Hidayatullah, J. C. Shah and Raghubar Dayal, JJ.
24th July, 1961.

Bhikraj Jaipuria *v.* The Union of India.
C.A. No. 86 of 1959.

Government of India Act (1935), *section* 175 (3)—*Government of India Act* (1915), *section* 40.

Relying upon its earlier judgment in Civil Appeal No. 209 of 1959 decided on 7th April, 1961 (*The State of Bihar* v. *Messrs. Karan Chand Thapar and Brothers Ltd.*) the Court held that " In our view, the High Court was in error in holding that the authority under section 175 (3) of the Government of India Act (1935), to execute the contract could only be granted by the Governor-General by rules expressly promulgated in that behalf or by formal notifications. This Court has recently held that special authority may validly be given in respect of a particular contract or contracts by the Governor to an officer other than the officer notified under the rules made under section 175 (3).

In any event, inadvertence of an officer of the State executing a contract in a manner violative of the express statutory provision, the other contracting party acquiescing in such violation out of ignorance or negligence will not justify the Court in not giving effect to the intention of the legislature, the provision having been made in the interest of the public. It must therefore be held that as the contract was not in the form required by the Government of India Act (1935), it could not be enforced at the instance of the appellant and therefore the Dominion of India could not be sued by the appellant for compensation for breach of contracts.

A. V. Viswanatha Sastri, Senior Advocate, for Appellant.

H. N. Sanyal, Additional Solicitor-General of India, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo and K. C. Das Gupta, JJ.
28th July, 1961.

The Ahmedabad Miscellaneous Industrial Workers' Union *v.* The Ahmedabad Electricity Co., Ltd.
C.A. No. 479 of 1960.

Industrial Disputes Act (*XIV of* 1947)—*Bonus*—*Full Bench formula*—*Calculation*—*Depreciation*—*How to be determined*—*Electricity* (*Supply*) *Act*, (*LIV of* 1948), *Seventh Schedule.*

In the circumstances it seems to us that it is not open to the appellant to raise the question that the provisions of the Seventh Schedule to the Electricity (Supply) Act should be applied for purposes of calculating depreciation in preference to the income-tax rates in working out the Full Bench formula.

Another reason why we think that the income-tax rates of depreciation should be applied for the purposes of the Full Bench formula in the case of electricity companies also is that income-tax rates provide for a quicker building up of the depreciation fund. This to our mind is all to the good in the case of public utility companies like those providing electricity so that they may be in a position to have funds at their disposal in case of unforeseen difficulties resulting in the necessity of replacing plant and machinery earlier than what is provided under the Seventh Schedule to the Electricity Supply Act.

C. T. Daru, Advocate, for Appellant.

D. Vimadalal, Advocate, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C. J., S. J. Imam, S. K. Das, P. B. Gajendragadkar, A. K. Sarkar, K. Subba Rao, K. N. Wanchoo, K. C. Das Gupta, Raghubar Dayal, N. Rajagopala Ayyangar and J. R. Mudholkar, JJ.
4th August, 1961.

The State of Bombay *v.* Kathi Kalu Oghad, (Interveners : 1. Attorney-General; 2. Bhupendra Nath & Aswini Kumar Haldar.) Cr. A. No. 146 of 1958; Pokhar Singh *v.* The State of Punjab, Cr. A. Nos. 110-111 of 1958 and The State of West Bengal *v.* Shri Farid Ahmed Cr. A. No. 174 of 1959.

Constitution of India (1950), *Article* 20 (3)—*Scope.*

By Majority.—Approving its earlier decision in (*Mohamed Dastagir* v. *The State of Madras*) 1960 S.C.J. 726: (1960) 2 M.L.J. (S.C.) 39: (1960) 2 An.W.R. (S.C.) 39: (1960) M.L.J. (Cr.) 466 : (1960) 3 S.C.R. 116, the Court held " In order to bring the evidence within the inhibitions of clause (3) of Article 20 it must be shown not only that the person making the statement was an accused at the time he made it and that it had a material bearing on the criminality of the maker of the statement, but also that he was compelled to make that statement." ' Compulsion ' in the context, must mean what in law is called ' duress '.

The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and, therefore, extorted. Hence, the mere asking by a police officer investigating a crime against a certain individual to do a certain thing is not compulsion within the meaning of Article 20 (3). Hence, the mere fact that the accused person, when he made the statement in question was in police custody would not, by itself, be the foundation for an inference of law that the accused was compelled to make the statement. Of course, it is open to an accused person to show that while he was in police custody at the relevant time, he was subjected to treatment which, in the circumstances of the case, would lend itself to the inference that compulsion was in fact exercised.

H. R. Khanna , Advocate, for Appellant in Cr. A. No. 146 of 1958.

S. P. Varma, Advocate, for Respondent.

M. C. Setalvad, Attorney-General for India, for Intervener No. 1, in Cr.A. No. 146 of 1958.

H. P. Wanchoo, Advocate, for Intervener No. 2.

R. C. Dutta, Advocate, for Intervener No. 3.

P. S. Safeer, Advocate, for Appellant in Cr.A. Nos. 110-111 of 1958.

S. M. Sikri, Advocate-General for the State of Punjab, for Respondent.

Sir S. M. Bose, Advocate-General for West Bengal, for Appellant in Cr.A. No. 174 of 1959.

G.R. *Appeals to be judged on merits.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao, M. Hidayatullah, J. C. Shah, and Raghubar Dayal, JJ.
4th August, 1961.

Balaji *v.* The Income-tax Officer, Special Investigation Circle.
Petition No. 240 of 1960.

Income-Tax Act (XI of 1922) *section* 16 (3) (a) (i)—*Validity—Article* 265 *of the Constitution of India* (1950)—*Article* 19 (1) (f) and (g).

The object sought to be achieved by section 16 (3) (*a*) (*i*) of the Income-tax Act was to prevent the prevalent abuse, namely, evasion of tax by an individual doing business under a partnership nominally entered into with his wife or minor children. The scope of the provisions is limited only to a few of the intimate members of a family who ordinarily are under the protection of the assessee and are dependants of him. The persons selected by the provisions, namely, wife and minor children, cannot also be ordinarily expected to carry on their business independently with their own funds, when the husband or the father is alive and when they are under his protection. Doubtless some of the said partnerships may be genuine and the wife or minor children may have contributed capital to the business ; but the provision does not in any way affect their rights and even the liability *inter se* between the husband and the wife or the minor children, as the case may be, in respect of the tax paid. It is true that in computing the total income of an individual for the purpose of assessment, their income in their capacity as partners shall be included in the income of the individual but the section does not prevent the husband or the father, as the case may be, from debiting against them in the partnership accounts that part of the tax referable to the share or shares of their income. It may be that a father or a husband may have to pay tax at a higher rate than ordinarily he would have to pay if the addition of the wife's or children's income to his own brings his total income to a higher slab. But it may not necessarily be so in a case where the income of the former is not appreciable ; even if it is appreciable, he can debit a part of the excess payment to his wife and children. In short, the firm, though registered, would be treated as a distinct unit of assessment, with the difference that, unlike in the case of a registered firm, the entire income of the unit is added to the personal income of the father or the husband, as the case may be. This mode of taxation may be a little hard on a husband or a father in the case of genuine partnership with wife or minor children, but that is offset, to a large extent, by the beneficent results that flow therefrom to the public, namely, the prevention of evasion of income-tax, and also by the fact that, by and large, the additional payment of tax made on the income of the wife or the minor children will ultimately be borne by them in the final accounting between them. In these circumstances, we cannot say that the provisions of section 16 (3) of the Act impose an unreasonable restriction on the fundamental rights of the petitioner under Article 19 (1) (*f*) and (*g*) of the Constitution.

J. M. Thakar, Advocate, for Petitioner.

H. N. Sanyal, Additional Solicitor-General of India, for Respondents.

G.R. ——— *Petition dismissed.*

[SUPREME COURT.]

P.B. Gajendragadkar, K. Subba Rao, M. Hidayatullah, J.C. Shah, and Raghubar Dayal, JJ.
9th August, 1961.

Paresh Chandra Chatterjee *v.* The State of Assam.
Petitions Nos. 236-237 of 1960.

Constitution of India (1950), *Seventh Schedule, List I, Entry* 52—*Article* 31 (2)—*Government of India Act* (1935), *Entries* 9 *of List* 2 *and* 34 *of List I—The Assam Land (Requisition and Acquisition) Act,* 1948.

If instead of the word " acquisition " the words " requisition " is read, and instead of the words " the market value of the land " the words " the market value of the interest in the land " of which the owner has been deprived are read, the two sub-sections of the impugned section, Assam Land (Requisition and Acquisition)

Act can, without any difficulty, be applied to the determination of compensation for requisition of a land. So, too, the other sections can be applied. If the argument of learned counsel for the petitioner be accepted, we would be attributing to the Legislature an incongruity, namely, that while it provides principles of compensation in the matter of acquisition, it omits to do so in the matter of requisition, though in both the cases a reference to the Court is provided. For the aforesaid reasons, we reject this contention.

K.B. Bagchi, Advocate, for petitioner.

A.V. Viswanatha Sastri, Senior Advocate, for Respondents.

S.V.S. — *Petition dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao, and M. Hidayatullah, JJ.
10th August, 1961.

The Commissioner of Income-tax, Madras *v.* S. A. S. Marimuthu Nadar.
C. As. Nos. 427-428 of 1960.

Income-tax Act (*XI of* 1922), *sections* 16 (3) (*a*) (ii).

The question referred to the Madras High Court was " Whether the assessee is entitled to earned income relief on the share income of the two minor sons for 1949-50 assessment year and on the share income of one minor son for 1950-51 assessment year included in the computation of the total income of assessee under the provisions of section 16 (3) (*a*) (ii) of the Income-tax Act".

In our opinion, the section can only be read as enacting that for purposes of earned income relief, " such income " will be included which, though it is the income of another person, has been earned by the assessee, or in the case of a firm, where the assessee is a partner, by his being actively engaged as partner in the conduct of the business. The words " where the assessee is a partner " must be given effect to, even when the income of the minor or the wife is considered under the latter part, and they also point to the same conclusion. In reading the definition in this way, no violence is done to the language of it. The condition that the assessee must have worked actively as a partner is thus applicable also to the latter part of the definition. In our opinion, the High Court was right in the answer which it gave.

H.N. Sanyal, Additional Solicitor-General of India, for Appellant.

Narayanswami, Advocate, for Respondent.

G.R. — *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao, M. Hidayatullah, J. C. Shah and Raghubar Dayal, JJ.
11th August, 1961.

Chandrakant Krishnarao Pradhan *v.* Shri Jasjit Singh, the Collector of Customs, Bombay.
Petitions Nos 80-81-A., 81 and 116 to 213 of 1960.
Tulsidas Khimji & Co. (Intervener) in Petitions Nos. 80 and 81 of 1960.

Sea Customs Act (*VIII of* 1878), *section* 202—*Customs Amendment Act,* 1955, *sections* 4 *and* 39.

Once it is held that the words " the person chargeable with the duty...." are apt to describe not only the real owner but also his authorised agent (and there is no reason why these words should be restricted), the fourth paragraph falls in line with the others, and the ownership of the agent is, therefore, limited to one client at a time, and the goods of that client of which the agent is also deemed the owner, are exposed to the penalty of detention. It must be remembered that the Act makes the ' goods ' liable to duty and the payment of duty by owners clears the goods. The law goes further, and says that other goods of the owner are also liable for any deficit if the goods liable to duty are ' cleared ' before the full duty has been paid,

In the result, the petitions must fail except to the extent that we declare Rule 10 (*c*) to be an unreasonable restraint upon the right of the petitioners to carry on their avocation, and Rule 11, when it prescribes a renewal fee of Rs. 50, invalid inasmuch as it has provided not for a fee but for a tax. Subject to this, the petitions are dismissed.

S.V. Gupte, Advocate, for Petitioners.

H.N. Sanyal, Additional Solicitor-General of India, for Respondents.

Porus A. Mehta, Advocate, for Interveners.

G.R. ——— *Petition dismissed in the main.*

Jagadisan, J. Umayamma *v.* Arumuk a perumal.
20*th June*, 1961. A.S. No. 198 of 1958.

Nanjanad Vellala Act (*VI of* 1101 *M. E.*)—*Tarwad property—Right of partition given under statute—Person entitled to share—If could sue for maintenance.*

It is no doubt true that a junior member, male or female of a Marumakkathayam tarwad would be entitled to separate maintenance from and out of the tarwad properties in certain circumstances. But that right is based on the footing of the impartible character of the tarwad property. When once an unqualified right of partition is given to a member of the tarwad to work out his or her share in the tarwad property by a legislative enactment like the Nanjanad Vellala Act, he or she cannot refuse to avail himself or herself of the right to share and insist upon being maintained out of the tarwad properties keeping the tarwad itself intact.

T. C. A. Thirumalachari and *V. V. Raghavan*, for Appellants.

Respondents not represented.

R.M. ——— *Appeal dismissed.*

Veeraswami, J. Embaru *v.* Chairman, Madras Port Trust.
26*th June*, 1961. W.P. No. 299 of 1960.

Madras Probation of Offenders Act (*III of* 1937), *sections* 4 (1) and 12-*A—Release of an offender on probation—Effect of—If such person could be dismissed from service by employer.*

Master and Servant—Standing Orders relating to service conditions—Provision as to dismissal of an employee from service on being convicted—If applicable to an offender released on probation.

The effect of an order of probation under section 4 (1) of the Madras Probation of Offenders Act is not one of acquittal but is based on a conviction being operative. Under section 12-A of the Act no doubt a person convicted, but released on probation, should be free of any disqualification attaching to a conviction. But in cases of master and servant, where, under the rules relating to the conditions of service, a servant is liable to be dismissed from service on being convicted of an offence, it is open to the employer to terminate the services of an employee convicted of an offence, even though the employee concerned might be released on probation under section 4 (1) of the Madras Probation of Offenders Act.

(1956) 2 M.L.J. 562, followed.

J. Samuel and *S. K. Damodaram*, for Petitioner.

V. V. Raghavan, for Respondent.

R.M. *Petition dismissed.*

Ramachandra Iyer, O. C. J., and Ramakrishnan, J.
10th July, 1961.

Ramiah Nadar *v.* Amirtharaj.
O.S.A. No. 48 of 1960.

Companies Act (I of 1956), section 237—Direction under—Nature of.

Letters Patent (Madras), clause 15—Appeal under—Order under section 237 of the Companies Act—If a judgment.

The investigation carried out by the Government in pursuance of an order of a Court under section 237 of the Companies Act is no more than a fact-finding one analogous to the issue of a Commission for looking into accounts in a dispute between the parties.

An order of Court directing investigation under the provisions of section 237 of the Companies Act will not amount to a judgment within the meaning of the term in clause 15 of the Letters Patent so as to entitle an aggrieved party to appeal therefrom.

V. Thyagarajan and *M. A. Rajagopalan*, for Appellant.

S. Swaminathan, for Respondents.

R.M. *Appeal dismissed.*

Veeraswami, J.
21st July, 1961.

Somu Achari *v.* Munianatha Chettiar.
W.P. Nos. 730 and 734 of 1961.

Motor Vehicles Act (IV of 1939), sections 44 (5) and 64-A and Rule 140-A of the Motor Vehicles Rules—Power of delegation under—Scope of—State Transport Authority if could delegate its revisional powers to the Secretary.

The Transport Authority acting under section 44 (5) of the Motor Vehicles Act, read with rule 140-A, is competent to delegate to its Secretary its power of revision under section 64-A. But it is not within its power to split up the power of revision and delegate to the Secretary only the power to grant interim stay. It is only the authority that exercises the power of revision that is competent to grant a stay in the proceedings, as the power of staying proceedings is only incidental to the power of revision.

V. Thyagarajan, G. Ramaswami and *S. M. Subramaniam*, for Petitioner.

S. Mohan Kumaramangalam, M. N. Rangachari and *S. Mahadevan*, for Respondent.

R.M. *Petition allowed.*

[Full Bench.]

Ramachandra Iyer, O. C. J., Srinivasan and Venkatadri, JJ.
28th July, 1961.

Duraiswami Nadar *v.* Sudalaimada Nadar.
A.A.O. No. 318 of 1957.

Limitation Act (IX of 1908)—Article 11-A—Applicability—Civil Procedure Code (V of 1908)—Order 21, rule 103—Scope of.

The period of limitation prescribed for suits under Article 11-A of the Limitation Act will apply only to suits instituted under Order 21, rule 103 of the Civil Procedure Code. Such a suit would lie only in cases of an order under rules 98 to 101 of Order 21 which contemplate an investigation and adjudication of the Court concerned. Where an application for re-delivery is withdrawn by the party stating that they will file a separate suit, and it is dismissed, it cannot be said that there is an order under rule 101 of Order 21 of the Code. It is not necesary in such a case to have it set aside under rule 103 within the period of time prescribed under Article 11-A of the Limitation Act.

Case law referred and discussed.

K. S. Desikan and *K. Raman*, for Appellant.

S. V. Venugopalachari, for Respondent.

R.M. *Appeal dismissed.*

Ramakrishnan, J.
31st July, 1961.

Arumugha Gounder, *In re.*
Crl.Mis. Pet. No. 741 of 1961.

Criminal Procedure Code (V of 1898), *section* 156 (3) *—Power of Magistrate under—Cognisable offence disclosed in a private complaint—Power of magistrate to forward the case to the police for investigation.*

Where a complaint is made to the Court it is open to the Court to order investigation by the police under section 156 (3) of the Criminal Procedure Code. In such cases it cannot be said that the Court has taken cognizance of any offence; but it applies its mind only for taking some other action, *viz.*, ordering investigation by the police.

10 M.L.T.P. 120 not good law, (1961) M.W.N. (Crl.) 39 (S.C.) Referred.

C. K. Venkatanarasimhan and *B. Satyakumar,* for Petitioner.

The Public Prosecutor for State.

R.M. — *Petition dismissed.*

Veeraswami, J.
10th August, 1961.

Janakiraman *v.* Board of Revenue, Madras.
W.P. No. 531 of 1961.

Madras Cinemas Regulation Act (IX of 1955)*—Rules under—Rule* 107*—Application for "Form C" licence—Enclosures required—If should be sent within any stipulated time.*

Under rule 107 (i) of the rules framed under the Madras Cinemas Regulation Act there is no time-limit prescribed within which an application for "Form 'C" licence is to be applied for. It no doubt prescribes that the application should be accompanied by certain documents including a certificate from the Chief Electrical Inspector. But an application for licence made without the certificate though not in proper form when preferred, can be a proper application when the Electrical Inspector's certificate is sent to the Collector at a later date.

V. P. Raman and *A. Sarojini Bai,* for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. — *Rule made absolute.*

Ganapatia Pillai, J.
11th August, 1961.

Amman Ammal *v.* Muthuswami.
C.R.P. No. 2136 of 1959.

Practice—Claim for restitution—If liable to levy of Court-fee.

Civil Procedure Code, section 47 (2)*—Claim for mesne profits by way of restitution—If court-fee is leviable on the claim.*

A demand for court-fee on an application treated as a suit under section 47 (2) of the Civil Procedure Code will depend not on the mere fact of the application being ordered to be registered as a suit, but upon the nature of the claim. In respect of a claim for restitution no court-fee will be payable. But where the claim is in the nature of an independent claim for mesne profits as such, for which a suit should have been laid, court-fee could be levied even though the application is made under section 47 of the Code.

V. Krishnan and *P. Viraraghavan*, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for State.

R.M. — *Petition allowed.*

Veeraswami, J.
16th August, 1961.

Ramaswami, *In re.*
Crl. R. C. No. 872 of 1960.
Crl. R. P. No. 842 of 1960.

Madras Prohibition Act (X of 1937), *section* 4-*A —Being in state of intoxication in a public place—What amounts to—Motor vehicle on a public road—If a public place.*

State of intoxication is in itself a question of fact and has to be determined in the light of the circumstances and nature of the habits and health of the person

alleged to be in such state. A motor car in which such a person was found, merely because it was found running on a public road, cannot be called a public place either within the meaning of section 4-A of the Madras Prohibition Act.

S. Mohan Kumaramangalam and *S. Sethuratnam*, for Petitioner.

The Public Prosecutor, for the State.

R.M. —————— *Petition allowed.*

Ramachandra Iyer, O. C. J. Abdul Kareem *v.* Mohammed.
17th August, 1961. C.R.P. No. 1047 of 1960.

Madras Buildings (Lease and Rent) Control Act (XVIII of 1960), *section* 10 (3)—*Landlord requiring premises for his own occupation—Test to decide.*

Where a landlord seeks to evict a tenant from his building on the ground that he requires the same for his own occupation, the fact that the accommodation in the rented premises occupied by the landlord is sufficient for him is a wholly immaterial consideration. What has to be found is whether the petitioner requires his own building for purposes of his occupation.

R. Ramamurthi Ayyar and *Syed Mohamed*, for Petitioner.

P. B. Ananthachari and *P. B. Sundararajan*, for Respondent.

R.M. —————— *Petition allowed.*

Veeraswami, J. Madurai City Co-operative Milk Supply Union *v.* Food Inspector, Madurai.
22nd August, 1961. Crl. Rev. C. No. 932 of 1960.

Prevention of Food Adulteration Act (XXXVII of 1954), *section* 20 (1)—*Object and scope of—Persons authorised to institute proceedings—If should be authorised for each particular case.*

The object of sub-section (1) of section 20 of the Prevention of Food Adulteration Act is to avoid indiscriminate prosecution without scrutiny. It provides that a prosecution for an offence under the Act can be instituted by the State Government or a local authority or by a person authorised by the State Government or local authority. It also provides that a prosecution may be instituted with the written consent of any of the categories of authorities aforesaid. When a person is authorised to institute proceedings, the authority vested in him is of the same quality and virtue as the power of the State Government or the local authority to institute prosecution. Hence a general authority by notification authorising all Food Inspectors to launch proceedings under the Act is enough to enable such persons to launch a prosecution. It is not necessary that the Food Inspector should be authorised to institute a prosecution in respect of each offence.

A.I.R. 1960 Ker. 356 : A.I.R. 1961 S.C. 1, referred.

S. Mohan Kumaramangalam, G. Ramanujam and *V. Ramaswami*, for Petitioner.

The Public Prosecutor, for State.

R.M. —————— *Petition dismissed.*

Veeraswami, J. Tambaram Panchayat *v.* Lakshmana Raja.
28th August, 1961. Cr. App. No. 743 of 1960.

Madras Village Panchayats Act (X of 1950)—*Rules under—Rule* 24—*Collection of tax—Prosecution for failure to pay tax—When could be resorted to.*

It is implicit in sub-rule (2) of rule 24 of the Rules framed under the Madras Village Panchayats Act, 1950, that prosecution of the defaulting party cannot be resorted to even in the first instance. It can be resorted to only when collection of tax by distraint is impracticable which can be said to arise only when a distraint has been actually tried and has been found to be impracticable or insufficient.

T. L. Radhakrishnan, for Petitioner.

R. Rangachari and *R. Raghunathan*, for Accused.

The Public Prosecutor, for State.

R.M. —————— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and *M. Hidayatullah, JJ.*
14th August, 1961.

The Commissioner of Income-tax, Kerala and Coimbatore *v.* Puthiya Ponmanichintakam Wakf.
C.A. No. 397 of 1960.

Income-tax Act (*XI of* 1922), *section* 41 (1)—*Muthawalli of a Wakf—If assessable as " an individual "—Mahomedan Law of Wakf.*

There is no scope for importing the Mahomedan Law of Wakf in section 41 of the Income-tax Act when the section in express terms treats the Muthawalli as a trustee, though he is not one in the technical sense under the Mahomedan Law. If the argument of learned counsel for the respondent be accepted, it would make section 41 of the Act otiose so far as wakfs are concerned, for in every case of wakf the property would be held for the Almighty and not for any person. We, therefore, reject this contention and answer the question: " Whether in the facts and circumstances of the case, the 1st proviso to section 41 is applicable?" in the affirmative.

K. N. Rajagopal Sastri, Senior Advocate, for Appellant.

A. V. Viswanatha Sastri, Senior Advocate, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and *M. Hidayatullah, JJ.*
16th August, 1961.

The Senior Electric Inspector *v.* Laxminarayan Chopra.
Civil Appeal No. 328 of 1958.

Electricity Act (*IX of* 1910), *section* 34 (2) (b)—*Construction—"Telegraph line" Interpretation of statutes*—Contemporanea exposito—*Applicability.*

The legal position may be summarized thus: The maxim *contemporanea expositio* as laid down by Coke was applied to construing ancient statutes, but not to interpreting Acts which are comparatively modern. There is a good reason for this change in the mode of interpretation. The fundamental rule of construction is the same whether the Court is asked to construe a provision of an ancient statute or that of a modern one, namely, what is the expressed intention of the Legislature. It is perhaps difficult to attribute to a legislative body functioning in a static society that its intention was couched in terms of considerable breadth so as to take within its sweep the future developments comprehended by the phraseology used. It is more reasonable to confine its intention only to the circumstances obtaining at the time the law was made. But in a modern progressive society it would be unreasonable to confine the intention of a Legislature to the meaning attributable to the word used at the time the law was made, for a modern Legislature making laws to govern a society which is fast moving must be presumed to be aware of an enlarged meaning; the same concept might attract with the march of time and with the revolutionary changes brought about in social, economic, political and scientific and other fields of human activity. Indeed, unless a contrary intention appears, an interpretation should be given to the words used to take in new facts and situations, if the words are capable of comprehending them. We cannot, therefore, agree with the learned Judges of the High Court that the maxim *contemporanea expositio* could be invoked in construing the word " telegraph line " in section 34 (2) (*b*) of the Electricity Act.

For the said reasons, it has to be held that the expression " telegraph line " is sufficiently comprehensive to take in the wires used for the purpose of the apparatus of the Post and Telegraph Wireless Station.

B. Sen, Senior Advocate, for the Appellants.

Dipak Datta Choudhri, for the Respondent No. 2.

G.R. *Appeal allowed.*

M.—N R C

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and *M. Hidayatullah, JJ.*
18th August, 1961.

The Dooars Tea Co., Ltd. *v.* The Commissioner of Agricultural Income-tax, West Bengal.
C.A.No. 381 of 1960.

Bengal Agricultural Income-tax Act (*IV of* 1944), *section* 63 (1)—*Section* 2 (1) (*b*) (i)—*Rules* 4 (1) and 4 (2)—*Scope.*

The questions referred to the High Court by the Tribunal were: (1) Is bamboo, thatch, fuel, etc., grown by assessee company and utilised for its own benefit in its tea business, agricultural income within the meaning of the Bengal Agricultural Income-tax Act? and (2) If the answer to question (1) be in the affirmative, can such income be computed under rule 4 of the Rules framed under the Act?

In our opinion, rule 4 (2) deals with cases where agricultural produce has been sold outside the market as well as cases where agricultural produce has not been sold at all. The effect of reading the two sub-rules together is that the cases of market sales are covered by rule 4 (1) and all other cases are covered by rule 4 (2). Rule 4 (2) is a residuary rule which applies to all cases not falling under rule (1). Therefore, we must hold that the answer given by the High Court to question (2) is also right. It is obvious that the Rules framed in exercise of the power conferred by section 57 of the Act cannot legitimately be pressed into service for the purpose of construing the relevant provisions of the Act; even so, incidentally it may be permissible to observe that the construction of rule 4 (2) which we are inclined to adopt is consistent with the respondent's case that section 2 (1) (*b*) (i) includes agricultural produce utilised by the appellant for its own business.

S. Mitra, Senior Advocate, for the Appellant.

Dr. R. B. Pal, Senior Advocate, for the Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta, J. C. Shah, and *Raghubar Dayal, JJ.*
21st August, 1961.

Shri Ambalal M. Shah *v.* Hathisingh Manufacturing Co., Ltd.
C.A. No. 285 of 1961.

Industries (*Development and Regulation*) *Act,* 1951, *section* 18-*A* (1) (*b*)—*Interpretation*—*Section* 15—*Scope.*

We have therefore come to the conclusion that the plain words used by the legislature " in respect of which an investigation has been made under section 15 " in section 18-A (1) (*b*) of the Industries (Development and Regulation) Act, 1951, cannot be cut down by the restricting phrase "based on an opinion that the industrial undertaking is being managed in a manner highly detrimental to the scheduled industry concerned or to public interest." We must therefore hold that the construction placed by the High Court on these words in section 18-A (1) (*b*) is not correct.

We have therefore come to the conclusion that the respondents were not entitled to any writ directing these appellants not to give effect to the Government's orders under section 18-A (1) (*b*).

H. N. Sanyal, Additional Solicitor-General of India, for Appellants.

I. M. Nanavati, Advocate, for the Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta, J. C. Shah and *Raghubar Dayal, JJ.*
22nd August, 1961.

Rani Purnima Debi *v.* Kumar Khagendra Narayan Deb.
C.A. No. 373 of 1958.

Will's genuineness—Section 63 *of the Indian Succession Act—Registration of the will—Concurrent findings of the Courts below—Interference.*

It was urged before us that in view of the concurrent findings of the Courts below we should be slow to disturb them. In view, however, of the suspicious circumstances noted by the High Court and some differences in the approach of the two learned Judges composing the Bench, we permitted learned counsel for parties to go into the entire evidence so that we may be able to judge whether the High Court was right in its conclusion that the fact of registration had dispelled all suspicions.

Law Reports are full of cases in which registered wills have not been acted upon: (see, for example, *Vellasamay Servai* v. *L. Sivaraman Servai* (1930) I.L.R. 8 Ran. 179, *Surendra Nath Lahiri* v. *Jnanendra Nath Lahiri,* A.I.R. 1932 Cal. 574, and *Girji Datt Singh* v. *Gangotri Datt Singh,* A.I.R. 1955 S.C. 346). Therefore, the mere fact of registration may not by itself be enough to dispel all suspicion that may attach to the execution and attestation of a will ; though the fact that there has been registration would be an important circumstance in favour of the will being genuine if the evidence as to registration establishes that the testator admitted the execution of the will after knowing that it was a will the execution of which he was admitting.

We have scrutinized that evidence carefully and we must say that the evidence falls short of satisfying us in the circumstances of this case that the testator knew that the document the execution of which he was admitting before Arabali and at the bottom of which he signed was his will. Therefore we are left with the bald act of registration which in our opinion is insufficient in the circumstances of this case to dispel the suspicious circumstances which we have enumerated above. We are threfore not satisfied about the due execution and attestation of this will by the testator and hold that the propounder has been unable to dispel the suspicious circumstances which surround the execution and attestation of this will. In the circumstances, no letters of administration in favour of the respondent can be granted on the basis of it.

S. T. Desai, Senior Advocate, for the Appellant.

K. R. Krishnaswamy, Advocate, for Respondent No. 1.

G.R. ——— *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, K. C. Das Gupta and *N. Rajagopala Ayyangar, JJ.*
22nd August, 1961.

Krishan Chander Nayar *v.* The Chairman, Central Tractor Organisation.
Petition No. 107 of 1957.

Constitution of India (1950), *Article* 16 (1)—*Scope—Reasonable basis for a ban on a person whose services have been terminated.*

We are, therefore, not in a position to say that the reason for the ban, whatever its nature, had a just relation to the question of his suitability for employment or appointment under the Government.

It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matters of employment or appointment to any office under the State, contained in Article 16 (1) of the Constitution. So long as the ban subsists, any application made by the petitioner for employment under the State is bound to be treated as waste-paper. The fundamental right guaranteed by the Constitution is not only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application has been made of course. The right does not extend to being actually appointed to the

post for which an application may have been made. The ban complained of apparently is against his being considered on merits. It is a ban which deprives him of that guaranteed right. The inference is clear that the petitioner has not been fairly treated.

D. D. Chawla, Advocate, for the Petitioner.

C. K. Daphtary, Solicitor-General of India, for the Respondents.

G.R. ——— *Petition allowed.*

[SUPREME COURT.]

J. L. Kapur, K. Subba Rao, M. Hidayatullah, J. C. Shah and *Raghubar Dayal, JJ.* *22nd August*, 1961.

R.M.D.C. (Mysore) Private, Ltd. *v.* The State of Mysore. C.A. No. 517 of 1960.

Prize Competition—Mysore Lotteries and Prize Competitions Control and Tax Act, (XXVII of 1951*)—Bombay Lotteries and Prize Competitions Control and Tax Act,* 1948 *as amended in* 1952*—Article* 252 (1) *of the Constitution—Prize Competition Act (XLII of* 1955).

At the time when the Mysore Lotteries and Prize Competitions Control and Tax Act was passed it was within the legislative power of the Mysore Legislature and it may be that it was rendered unconstitutional by reason of sections 4 and 5 in the Prize Competitions Act (Central Act) but that portion which deals with taxation cannot be held to be void because as a result of the Amending Act the words which were repugnant to the provisions of the Central Act were subsequently declared by the Mysore Legislature to be deemed to have been omitted as from April 1, 1956, the day when the Central Act came into force. This is in accord with the view taken in *Deep Chand* v. *The State of Uttar Pradesh and others* (1959) Supp. (2) S.C.R. 8, 24, 42): (1959) S.C.J. 1069, *i.e.*, the doctrine of eclipse could be invoked in the case of a law which was valid when made but was rendered invalid by a supervening constitutional inconsistency. The law may be summed up as follows :

(1) By passing the resolutions as to control and regulation the power to tax had not been surrendered to Parliament.

(2) The Amending Act was not a new method of controlling prize competitions nor was it a piece of colourable legislation.

(3) There was no amendment of an Act which stood repealed nor was the retroactive operation of the Amending Act affected by Article 254 (1) of the Constitution.

The impugned law is therefore *intra-vires.*

Porus A. Mehta, Advocate, for the Appellants.

N. C. Chatterjee, Senior Advocate, for the Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar, and *J. R. Mudholkar, JJ.* *24th August*, 1961.

Dhaneshwar Narain Saxena *v.* The Delhi Administration. Cr.A. No. 6 of 1959.

Penal Code (XLV of 1860), *section* 161*—Section* 5 *of the Prevention of Corruption Act (II of* 1947)*—Decision in the* State of Ajmer *v.* Shivji Lal, (1959) S.C.J. 911 : (1959) M.L.J. (Crl.) 589: (1959) Supp. (2) S.C.R. 739) *reconsidered.*

It will be observed that the heading of Prevention of Corruption Act section 5 is '*Criminal misconduct in the discharge of official duty*'. That is a new offence which was created by the Act, apart from and in addition to offences under the Indian Penal Code, like those under section 161, etc. The legislature advisedly widened the scope of the crime by giving a very wide definition in section 5 with a view to punish those who, holding public office and taking advantage of their official position, obtain

any valuable thing or pecuniary advantage. The necessary ingredient of an offence under section 161, Indian Penal Code, is the clause " as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person, with the Central or any State Government or Parliament or the Legislature of any State, or with any public servant", but it need not be there in order to bring an offence under section 5 of the Act home to the accused. The offence under this section is, thus, wider and not narrower, than the offence of bribery as defined in section 161, Indian Penal Code. The words " in the discharge of his duty " do not constitute an essential ingredient of the offence. The mistake in the judgment of this Court in the aforesaid ruling in the *State of Ajmer* v. *Shivji Lal*, (1959) S.C.J. 911 : (1959) M.L.J. (Crl.) 589, has arisen from reading those words, which are part merely of the nomenclature of the offence created by the Statute, whose ingredients are set out in sub-clauses (*a*) to (*d*) that follow, as descriptive of an essential and additional ingredient of each of the types of offence in the four sub-clauses.

T. C. Mathur, for Appellant.

B. K. Khanna, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., S. K. Das, A. K. Sarkar, N. Rajagopala Ayyangar and *J. R. Mudholkar, JJ.* *29th August*, 1961.

Devata Prasad Singh Chaudhuri *v.* The Hon'ble the Chief Justice and Judges of the Patna High Court. Petition No. 117 of 1958.

Legal Practitioners Act (*XXVIII of* 1879), *sections* 9 *and* 11—*Article* 19 *of the Constitution—General Rules and Circular Orders of the High Court of Patna* (*Civil*), 1922, *section* 2 *of the Supreme Courts Advocates* (*Practice in the High Court*) *Act*, 1951—*Section* 15 *of the Bar Council Act* (*XXXVIII of* 1926).

Sections 9 and 11 of the Legal Practitioners Act must be read together and it would be wrong to treat the right to practise given by section 9 as dissociated from the functions, powers and duties of Mukhtars referred to in section 11. The learned Advocate for the petitioners is reading the two sections as though one section gives an absolute right and the other section merely empowers the making of rules to effectuate that right. That, we do not think, is a proper reading of the two sections. It is worthy of note that under section 9 itself a distinction is made between the right of a Mukhtar to practise in civil Courts and his right to appear, plead and act in any criminal Court. In express terms section 9 gives every Mukhtar the right to appear, plead and act in any criminal Court ; it does not, however, give such an unlimited right in a civil Court. On the contrary, it merely says that on enrolment a Mukhtar may practise in any civil Court, but under section 11 the High Court may make rules declaring what shall be deemed to be the functions, powers and duties of Mukhtars practising in the subordinate Courts. It is clear to us that in declaring what shall be the functions and powers of Mukhtars practising in the subordinate Courts, the High Court can so delimit them as to regulate the right of practice. It will be wrong to treat the functions and powers as dissociated from the right to practise. The right to practise must depend on the functions and powers. It is also worthy of note that the expression used in section 11 of the Act is much wider that the expression used in section 15 of the Bar Council Act (XXXVIII of 1926), which gives the Bar Council the power to make rules to provide for and regulate the rights and duties of Advocates of the High Court. We do not think that the majority decision in *Aswin Kumar Ghosh and another* v. *Arabinda Bose and another*, (1952) S.C.J. 568: (1953) S.C.R. (1) is of any assistance to the petitioners.

R. K. Garh, for Petitioners.

G.R. ——— *Petition dismissed.*

Jagadisan and *Srinivasan, JJ.*
30*th August*, 1961.

State of Madras *v.* Davershala Tea Co. (P.) Ltd.
T. C. Nos. 118 and 122 of 1958.

Madras Agricultural Income-tax Act (*V of* 1955), *section* 2 (*a*) (3)—*Income from building —When agricultural income.*

Where any building conforms to the requirement of the Proviso to section 2 (*a*) (3) of the Madras Agricultural Income-tax Act and any income is derived therefrom such income is defined to be agricultural income. The question as to who is the person liable for the tax in respect of that income, whether the owner or the cultivator, cannot affect the nature of the income.

The Government Pleader (*A. Alagiriswami*), for Petitioner.

Messrs. King and *Partridge*, for Respondent.

R.M. *Petition allowed.*

Ramachandra Iyer, O. C. J. and *Kailasam, J.*
1*st September*, 1961.

Ekambara Mudaliar *v.* Sivasankara Mudaliar.
L.P.A. No. 78 of 1961.

Practice—Appeal under clause 15 *of the Letters Patent from an order refusing to grant leave to appeal* in forma pauperis—*Notice to opposite party—If necessary.*

Civil Procedure Code (*V of* 1908), *Order* 45, *rule* 2—*Leave to appeal* in forma pauperis —*Refusal by single Judge of the High Court—Letters Patent Appeal—Notice to respondent—If necessary before deciding the Letters Patent Appeal.*

Letters Patent (*Madras*), *clause* 15—*Appeal under, from an order refusing to grant leave to appeal* in forma pauperis—*Notice to respondent—If necessary.*

Where an appeal is preferred under clause 15 of the Letters Patent from an order of a single Judge of the High Court refusing leave to appeal *in forma pauperis* it is not necessary that notice should be issued to the respondent before the Court can grant the leave to appeal *in forma pauperis*. No notice is necessary to the respondents before deciding a Letters Patent Appeal against an order declining to grant leave to appeal *in forma pauperis*.

I.L.R. 53 Mad. 245, followed.

S. V. Rama Ayyangar and *R. Srinivasan*, for Appellant.

R.M. *Appeal allowed*

Srinivasan, J.
1*st September*, 1961.

Santhosa Nadar *v.* First Addl. Income-tax Officer, Tuticorin.
C.M.P. No. 1216 of 1961.
(W.P. No. 1269 of 1960.)

Income-tax Act (*XI of* 1922), *section* 28 (1) (*c*)—*If could apply to cases where no return is filed by an assessee.*

Section 28 (1) (*c*) of the Income-tax Act could apply only to cases where a return has been filed and it is wholly inappropriate to cases where no return has at all been filed. Cases where no return has at all been filed in fact or where there is no valid return filed in law will come only under section 28 (1) (*a*) of the Act.

M. R. M. Abdul Kareem and *T. Martin*, for Petitioner.

C. S. Rama Rao Sahib and *S. Ranganathan*, for Respondent.

R.M. *Petition allowed*

[SUPREME COURT.]

B. P. Sinha, C. J., A. K. Sarkar and J. R. Mudholkar, JJ.
30*th August*, 1961.

Payare Lal *v.* The State of Punjab.
Cr.A. No. 240 of 1960.

Prevention of Corruption Act (II of 1947), *section* 5 (2)—*Criminal Law Amendment Act, (XLVI of* 1952)—*Criminal Procedure Code (V of* 1898), *section* 8—*Sections* 251 *to* 259 —*Section* 350—*Section* 537.

Following the principle laid by the Privy Council in *Pulu Kuri Kotayya* v. *King Emperor* L.R. 74 I.A. 65: (1947) 1 M.L.J. 219 the Court held "It seems to us that the case falls within the first category mentioned by the Privy Council. This is not a case of irregularity but want of competency. Apart from section 350 which, as we have said, is not applicable to the present case, the Criminal Procedure Code does not conceive of such a trial. The trial offends the cardinal principle of law earlier stated, the acceptance of which by the Code is clearly manifest from the fact that the Code embodies an exception to that principle in section 350. Therefore, we think that section 537 of the Code has no application. It cannot be called in aid to make what was incompetent, competent. There has been no proper trial of the case and there should be one."

Even in Madras, in In re *Fernandez* (1958) 2 M.L.J. 294 (F.B.) a Full Bench of the High Court has now held that section 350 of the Code was not applicable to a Special Judge and has overruled In re *Vaidyanatha Iyer*, (1954) I M.L.J. 15; A.I.R. (1954) Mad. 350). That appears to be the position on the authorities.

Jai Gopal Sethi, for Appellant.

N. S. Bindra, for Respondent.

G.R. *Appeal allowed.*

[SUPREME COURT.]

J. L. Kapur, K. Subba Rao and Raghubar Dayal, JJ.
30*th August*, 1961.

The State of Punjab *v.* Barkat Ram.
Cr.A. No. 45 of 1959.

Land Customs Act (XIX of 1923)—*Sea Customs Act (VIII of* 1878)—*Evidence Act (I of* 1872), *sections* 25 *and* 27—*Who is a Police Officer*—*Sections* 17 *and* 18 *of the Police Act (V of* 1861).

By Majority.—We are therefore of opinion that the duties of the Customs Officers are very much different from those of the Police Officers and that their possessing certain powers, which may have similarity with those of Police Officers, for the purpose of detecting the smuggling of goods and the persons responsible for it, would not make them Police Officers.

The words 'Police Officer' are therefore not to be construed in a narrow way, but have to be construed in a wide and popular sense, as was remarked in *R.* v. *Hurribole* (I.L.R. I Cal. 207) where a Deputy Commissioner of Police who was actually a Police Officer and was merely invested with certain Magisterial powers was rightly held to be a Police Officer within the meaning of that expression in section 25 of the Evidence Act.

We therefore hold that the Customs Officers are not Police Officers for the purpose of section 25 of the Evidence Act.

We further hold that the conviction of the respondent for the offences under section 23 (1) of the Foreign Exchange Regulation Act, 1947, and under section 167 (8) of the Sea Customs Act, 1878, on the basis of his statements to the Customs Officers, was legal and was wrongly set aside. We set aside the order of acquittal of the respondent for the aforesaid offences and restore the order of conviction passed by the Magistrate and confirmed by the Sessions Judge.

M—N R C

We make it clear, however, that we do not express any opinion on the question whether officers of departments other than the police, on whom the powers of an officer-in-charge of a Police Station under Chapter XIV of the Code of Criminal Procedure, have been conferred, are Police Officers or not for the purpose of section 25 of the Evidence Act, as the learned counsel for the appellant did not question the correctness of this view for the purpose of this appeal.

H. R. Khanna, for Appellant.

Gopal Singh, for Respondent.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and M. Hidayatullah, JJ.
31st August, 1961.

The Andhra Bank Ltd. *v.* R. Srinivasan.
C.A. No. 508 of 1958.

Civil Procedure Code (*V of* 1908), *sections* 2 (11), 13 *and* 50—*Private International Law—Scope of the expression* "(*Legal Representative*)"—*Meaning of* "*Estate.*"

There is no justification for holding that the " Estate " in the context must mean the whole of the estate. Therefore, we are satisfied that the plain construction of section 2 (11), Civil Procedure Code is against Mr. Sastri's argument, apart from the fact that considerations of logic and commonsense are equally against it.

In support of his argument Mr. Sastri has referred us to a decision of the Madras High Court in *Natesa Sastrigal* v. *Alamelu Achi* (1950) 1 M.L.J. 476. In that case the Madras High Court no doubt seems to have observed that section 2(11) does not include legatees of part of the estate. With respect, we think the said observation does not represent the correct view about the interpretation of section 2 (11).

We accordingly hold that the foreign judgments in the two suits pronounced by the City Civil Court at Hyderabad are judgments pronounced by a Court of competent jurisdiction, and so the defence raised by respondents 2 to 12 under section 13 (1), Civil Procedure Code must fail. We have also held that respondents 2 to 12 are the legal representatives of the deceased Raja Bahadur and so it follows that the estate of the deceased Raja Bahadur was sufficiently represented by them when the said judgments were pronounced.

A. Ranganatham Chetty, for Appellant.

A. V. Viswanatha Sastri, for Respondents 1 to 3.

R. Ganapathy Iyer, for Respondents 5 to 9, 11 and 12.

G.R. —— *Appeal allowed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and M. Hidayatullah, JJ.
31st August, 1961.

Karanpura Development Co. Ltd. *v.* The Commissioner of Income-tax, West Bengal.
C.A. Nos. 376 to 379 of 1960.

Business Profits Tax Act (*XXI of* 1947), *section* 19 *read with section* 66-*A* (2) *of the Income-Tax Act* (*XI of* 1922)—*Excess Profits Tax Act* (*XV of* 1940), *section* 2 (5) *and its proviso.*

A common question referred to the High Court was " Whether on the facts and in the circumstances of the case, the sums received as *salami* by the assessee for granting sub-leases were trading receipts in its hands and the amount of profit therein is assessable under the Indian Income-tax Act."

Annexure F shows the areas which were sub-leased. A glance at the chart shows the large number of sub-leases and the different companies to which the sub-leases were granted. These sub-leases were granted because the assessee company wanted, as a matter of business, to turn its rights to account. The assessee company opened out, and developed the areas, and then granted these sub-leases

with an eye to profits. It is clear from these operations that the assesse company having secured a large tract of coal-bearing land parcelled and developed it into a kind of stock-in-trade to be profitably dealt with. The assessee company extended its business along these lines acquiring fresh fields. In the circumstances, the nature of the business was trading within the objects of the company and not enjoyment of property as land owner. There was also no sale of its fixed capital at a profit. In our opinion, the High Court rightly answered the question against the assessee company.

S. Mitra, for Appellant.

M. C. Setalvad, Attorney-General for India, for Respondent.

G.R. — *Appeals dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, K. Subba Rao and M. Hidayatullah, JJ.

4th September, 1961.

Bhagwan Dayal *v.* Mst. Reoti Devi deceased and after her death, Mst. Dayavati, her daughter.

C.A. No. 448 of 1958.

*Hindu Law—Coparcenery—Business—Incidents—*Res Judicata—*Section* 271 *of the Agra Tenancy Act*, 1926—*Madras Estates Land Act* (*I of* 1908).

The legal position may be stated thus : Coparcenery is a creature of Hindu Law and cannot be created by agreement of parties except in the case of reunion. It is a corporate body or a family unit. The law also recognizes a branch of the family as a subordinate corportate body. The said family unit, whether the larger one or the subordinate one, can acquire, hold and dispose of family property subject to the limitations laid down by law. Ordinarily, the manager, or by consent, express or implied, of the members of the family, any other member or members can carry on business or acquire property, subject to the limitations laid down by the said law, for or on behalf of the family. Such business or property would be the business or property of the family. The identity of the members of the family is not completely lost in the family. One or more members of that family can start a business or acquire property without the aid of the joint family property, but such business or acquisition would be his or their acquisition. The business so started or property so acquired can be thrown into the common stock or blended with the joint family property in which case the said property becomes the estate of the joint family. But he or they need not do so, in which case the said property would be his or their self-acquisition, and succession to such property would be governed not by the law of joint family but only by the law of inheritance. In such a case, if a property was jointly acquired by them, it would not be governed by the law of joint family; for Hindu Law does not recognize some of the members of a joint family belonging to different branches, or even to a single branch, as a corporate unit. Therefore, the right *inter se* between the members who have acquired the said property would be subject to the terms of the agreement whereunder it was acquired. The concept of joint tenancy known to English Law with the rights of survivorship is unknown to Hindu Law except in regard to cases specially recognized by it. In the present case, the uncle and the two nephews did not belong to the same branch. The acquisitions made by them jointly could not be impressed with the incidents of joint-family property. They can only be co-sharers or co-tenants, with the result that their properties passed by inheritance and not by survivorship.

M. C. Setalvad, Attorney-General for India, for Appellants.

A. V. Viswanatha Sastri, for Respondent.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta, J. C. Shah and Raghubar Dayal, JJ.
5th September, 1961.

The Union of India *v.* The Mohindra Supply Co.
C.A. No. 112 of 1958.

Arbitration Act (*X of* 1940), *section* 39 (2)—*Scope—Sections* 100, 104 *and* 105, *Civil Procedure Code* (*V of* 1908)—*Clause* 10 *of the Letters Patent of the High Court of Lahore.*

There is no warrant for assuming that the reservation clause in section 104 of the Civil Procedure Code of 1908 was as contended by counsel for the respondents, " superfluous " or that its "deletion from section 39 (1) of the Arbitration Act (1940) has not made any substantial difference ": the clause was enacted with a view to do away with the unsettled state of the law and the cleavage of opinion between the Allahabad High Court on the one hand and Calcutta, Bombay and Madras High Courts on the other on the true effect of section 588 of the Code of Civil Procedure upon the power conferred by the Letters Patent. If the legislature being cognizant of this difference of opinion prior to the Code of 1908 and the unanimity of opinion which resulted after the amendment, chose not to include the reservation clause in the provisions relating to appeals in the Arbitration Act of 1940, the conclusion is inveitable that it was so done with a view to restrict the right of appeal within the strict limits defined by section 39 and to take away the right conferred by other statute. The Arbitration Act which is a consolidating and amending Act, being substantially in the form of a code relating to arbitration must be construed without any assumption that it was not intended to alter the law relating to appeals. The words of the statute are plain and explicit and they must be given their full effect and must be interpreted in their natural meaning, uninfluenced by any assumptions derived from the previous state of the law and without any assumption that the legislature must have intended to leave the existing law unaltered. In our view the legislature has made a deliberate departure from the law prevailing before the enactment of Act X of 1940 by codifying the law relating to appeals in section 39.

In that view of the case, the appeal must be allowed. No order as to costs in this Court. The order of the Division Bench of the High Court is set aside and the order passed by the learned Single Judge is restored. We may add that on the view taken by us as to the competency of the appeal under clause 10 of the Letters Patent, we have not heard counsel on the merits of the appeal.

Naunit Lal, for Appellant.

S. T. Desai, for Respondent.

G.R. — *Appeal allowed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar and Raghubar Dayal, JJ.
5th September, 1961.

Mst. Gulab Bai *v.* Manphool Bai.
C.A. No. 201 of 1956.

Civil Procedure Code (*V of* 1908), *section* 11—*Interpretation of* " *suit* ".

Having regard to the legislative background of section 11, Civil Procedure Code we feel no hesitation in holding that the word " suit " in the context must be construed literally and it denotes the whole of the suit and not a part of it or a material issue arising in it.

Several decisions have been cited before us where this question has been considered. We do not think any useful purpose would be served by referring to them. It may be enough to state that in a large majority of decisions the word " suit " has been literally construed (vide *Ram Dayal* v. *Jankidas and another,* ((1900) I.L.R. 24 Bom. 456 and *Shibo Raut* v. *Baban Raut,* (1908) I.L.R. 35 Cal. 353), though in some cases and under special circumstances a liberal construction has been accepted (vide *Sheikh Maqsood Ali and another* v. *H. Hunter and others,* A.I.R. 1943 Oudh 338).

We must accordingly hold that the High Court was right in coming to the conclusion that the present suit is not barred by *res judicata*.

S. N. Andley, for Appellants 2 and 3.

N. C. Chatterjee, for Respondent.

G.R. ——— *Appeal dismissed.*

[SUPREME COURT.]

P. B. Gajendragadkar, A. K. Sarkar, K. N. Wanchoo, K. C. Das Gupta and N. Rajagopala Ayyangar, JJ.
12th September, 1961.

Raghubar Dayal Jai Prakash etc. *v.* The Union of India.
Petitions Nos. 22-26 and 42 of 1959.

Forward Constracts (Regulation) Act (LXXIV of 1952)*—Validity of Notification under section* 15*—Articles* 14 *and* 19 *of the Constitution of India* (1950).

In situations like those here the reasonableness of the restriction has necessarily to be tested by the degree of urgency which required the intervention of Government. That would be largely a question of fact, and we have already extracted paragraphs 195 to 197 of the Annual Report of the Forward Markets Commission for 1959 in which the situation which necessitated the impugned notifications is described. It is plain enough that enquiries which had to precede the recognition of associations under Chapter III do take some time, and in fact, in the present case, the recognitions were accorded in June, 1959, and if emergent action was required to control a situation which threatened to worsen rapidly, we do not consider that the action of the Government in stepping in even before the recognition of associations could in the circumstances be characterised as unreasonable. After all, it is a question of balancing individual rights and the profits which could be reaped by individuals under an existing state of the law, against the public benefit arising from the exercising of control, and if Government considered that the latter would be best served by immediate action under a valid provision of the law, and the circumstances reasonably warranted that opinion, we hold, that in the absence of any proof of *mala fides*, and there is none here, the action of the Government cannot be held to violate the constitutional limits set by clause (6) of Article 19 of the Constitution.

In our opinion, the selection of the commodity for the regulation of forward trading in it or of prohibition of such trading can only be left to the Government and the purposes for which the power is to be used and the machinery created for the investigation furnish sufficient guidance as to preclude any challenge on the ground of a violation of Article 14. What we have just now said as regards the selection of the commodity would suffice to answer the argument regarding the selection of the time at which the notification under section 15 (1) of the Forward Contracts (Regulation) Act 1952, might take place.

We see, therefore, no sufficient ground for holding that the power conferred on the Central Government to fix the price at which contracts could be closed out is either legislatively incompetent or constitutionally invalid. What we stated earlier should suffice to show that the actual price at which the contracts were required to be settled out fixed in the impugned notification conformed to the requirement of reasonableness in Article 19(6) of the Constitution and that underlying the relevant provisions of the statute.

M. K. Nambiar, Senior Advocate, for the Petitioners in Petitions Nos. 22 and 23 of 1959.

N. C. Chatterjee, Senior Advocate, for the Petitioners in Petitions Nos. 24 and 25 of 1959.

E. Udayarathnam, Advocate, for the Petitioners in Petition No. 26 of 1959.

S. T. Desai, Senior Advocate, for the Petitioners in Petition No. 42 of 1959.

C. K. Daphtary, Solicitor-General of India, for Respondent No. 1 in all the Petitions.

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B. P. Maheshwari, Advocate, for Respondent No. 2 in Petitions Nos. 22 and 25 of 1959.

G. C. Mathur, Advocate, for Respondent No. 2 in Petitions Nos. 26 and 42 of 1959.

R. L. Agarwala, Advocate, for the Interveners.

G.R. — *Petitions dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta and J. C. Shah. JJ.
12th September, 1961.

Tori Singh and another *v.* The State of Uttar Pradesh.
Cr.A. No. 38 of 1961.

Criminal Procedure Code (*V of* 1898)—*Section* 162—*Scope.*

Following its earlier decision in *Santa Singh* v. *The State of Punjab* (A.I.R. 1956 S.C. 526), the Court held that "In the circumstances, these marks on the map based on the statements made to the Sub-Inspector are inadmissible under section 162 of the Code of Criminal Procedure and cannot be used to found any argument as to the improbability of the deceased being hit on that part of the body where he was actually injured, if he was standing at the spot marked on the sketch-map.

C. B. Agarwala, for the Appellants.

G. C. Mathur for the Respondent.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta and J. C. Shah. JJ.
13th September, 1961.

Ramratan *v.* The State of Rajasthan.
Cr.A. No. 248 of 1960.

Evidence Act (*I of* 1872), *sections* 6 *and* 167—*Scope*—*Testimony of single witness*—*Corrob oration*—*If essential.*

Following its earlier decision in (1957) S.C.R. 981 as distinguished from (1956) S.C.J. 382 : (1956) S.C.R. 247, the Court held that unless corroboration is insisted upon by statute, Courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, and that the question whether corroboration of the testimony of a single witness was or was not necessary, must depend upon facts and circumstances of each case. There are the general principles which we have to apply in the case of the testimony of a single witness, like Jawanaram. But as we have held that in the present case there is corroboration of Jawanaram's statement by his former statement deposed to by Roopram, it is not a case of altogether uncorroborated testimony of a single witness.

R. L. Anand, Senior Advocate, for the Appellants.

S. K. Kapur, Advocate, for the Respondent.

G.R. — *Appeal dismissed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
14th September, 1961.

The State *v.* Captain Jagjit Singh.
Cr.A. No. 118 of 1961.

Official Secrets Act (*XIX of* 1923)—*Penal Code* (*XLV of* 1860), *section* 120-*B and sections* 496 *and* 498, *Criminal Procedure Code* (*V of* 1898).

The case against the respondent is in relation to the military affairs of the Government, and *prima facie*, therefore, the respondent if convicted would be liable upto fourteen years imprisonment. In these circumstances considering the nature of the offence, it seems to us that this is not a case where discretion, which undoubtedly vests in the Court, under section 498 of the Code of Criminal Procedure, should have

been exercised in favour of the respondent. We advisedly say no more as the case has still to be tried.

We therefore allow the appeal and set aside the order of the High Court granting bail to the respondent. As he has already been arrested under the interim order passed by this Court, no further order in this connection is necessary. We, however, direct that the Sessions Judge will take steps to see that as far as possible the trial of the respondent starts within two months of the date of this order.

C. K. Daphtary, Solicitor-general of India, for the Appellant.

N. C. Chatterjee, Senior Advocate, for the Respondent.

G.R. *Appeal allowed.*

[Supreme Court.]

K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
15th September, 1961.

Abbiraj Kuer *v.* Debendra Singh.
C.A. No. 379 of 1958.

Hindu Law—Adoption—Can a wife's sister's daughter's son be validly adopted.

In our opinion a marriage of a Hindu with his wife's sister's daughter is not invalid in law even though it may not be liked by certain people. Mr. Jha's second argument based on the rule which we have assumed to be not open to challenge for the purpose of this case that there can be no valid adoption unless a legal marriage is possible between the person for whom the adoption is made and the mother of the boy who is adopted in her maiden state, must therefore fail.

We therefore hold that the High Court was right in its conclusion that the adoption of a wife's sister's daughter's son is valid in law.

L. K. Jha, Senior Advocate, for the Appellant.

R. C. Prasad, Advocate, for the Respondent.

G.R. *Appeal dismissed.*

[Supreme Court.]

K. N. Wanchoo, K. C. Das Gupta, J. C. Shah and Raghubar Dayal, JJ.
18th September, 1961.

Sunkavilli Suranna *v.* Gali Sathiraju.
C.A. No. 424 of 1958.

Madras Estates Lands Act (I of 1908)*—Madras Regulation XXV of* 1802*—Rent Recovery Act.*

To summarise, there is no evidence to show that occupation of the lands by Thammiah commenced under the Zamindar ; and there is no evidence as to the terms on which Thammiah or his predecessors were inducted on the lands: the commencement of the tenancy and the terms thereof are lost in antiquity, but Thammiah and his descendants are proved to have continued in possession of land uninterruptedly till the enactment of the Madras Estates Land Act, 1908. In the light of the presumption that the Zamindar is, unless the contrary is proved, the owner of the melvaram and the ryot the owner of the kudivaram the inference is irresistible that Thammiah was the holder of the occupancy rights in the lands and that these rights devolved upon his successors and that the occupancy rights in the lands were not acquired by virtue of the provisions of Madras Act VI of 1908.

K. Bhimasankaram, Senior Advocate, for the Appellants.

T. V. R. Tatachari, Advocate, for the Respondents 1 to 3.

P. Ram Reddy, Advocate, for Respondent 9.

G.R. *High Court's decree affirmed except with regard to mesne profit.*

[SUPREME COURT.]

K. N. Wanchoo and K. C. Das Gupta, JJ.
20th September, 1961.

M/s. Bharat Sugar Mills, Ltd. *v.*
Jai Singh.
C.A. No. 252 of 1960.

Industrial Disputes Act (XIV of 1947), *section* 33—*Standing Orders—'Go slow' as misconduct.*

Following its earlier decision in *Phulbari Tea Estate* v. *Its Workmen*, ((1960) 1 S.C.R. 32), the Court held that in view of these serious defects in the enquiry by the domestic tribunal it was not possible for the Industrial Tribunal to place any reliance on the findings of that domestic tribunal in order to decide whether permission to dismiss should be given under section 33 of the Industrial Disputes Act.

In spite of the recommendation of the 'go-slow' committee and the resolution of the Bihar Government " go-slow" continued to be a misconduct under the Standing Orders and a mere refusal of the company to attend the conciliation meeting cannot be considered such provocation as would compel or justify the commission of misconduct. Nor can we find even assuming for the present that the company did deliberately prevent the conciliation meeting before the 12th February, that this showed an intention to victimise. Before an industrial adjudication can find an employer guilty of an intention to victimise there must be reason to think that the employer was intending to punish workmen for their Union activities, while purporting to take action ostensibly for some other activity. It would be unreasonable to think that the appellant expected that if the meeting was not held on the date as proposed the workmen were sure to start go-slow and that that would give the management an opportunity of proceeding against the Union workers. It was not unreasonable for the management to expect better sense from workmen and to hope that they would not commit misconduct too readily. While we do not wish to say that no unfair conduct on the part of the management in negotiations over the workers' threat to go slow would ever justify a finding of *mala fides* on the employer's part, we must clearly say that the mere asking for adjournment of a conciliation meeting is not such conduct on which *mala fides* or an intention to victimise can be reasonably based.

We accordingly allow the appeal in part and set aside the order of the Industrial Tribunal in respect of these 13 workmen named above and order that the management is granted permission to dismiss them with effect from the date of this judgment.

A. B. N. Sinha, Advocate, for the Appellants.

T. R. Bhasin, Advocate, for the Respondents.

G.R. *Appeal partly allowed.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta and J. C. Shah, JJ.
20th September, 1961.

Abdul Kader Shamsuddin Burere *v.* Madhav Prabhakar Oak.
C.A. No. 305 of 1958.

Arbitration Act (X of 1940), *section* 20—*Allegations of fraud—If ground for refusing arbitration agreement to be filed.*

There is no doubt that where serious allegations of fraud are made against a party and the party who is charged with fraud desires that the matter should be tried in open Court, that would be a sufficient cause for the Court not to order an arbitration agreement to be filed and not to make the reference. But it is not every allegation imputing some kind of dishonesty, particularly in matters of accounts, which would be enough to dispose a Court to take the matter out of the forum which the parties themselves have chosen. This to our mind is clear even from the decision in *Russel's case*, (1880) L.R. 14 Ch.D. 471. In that case there were allegations of constructive and actual fraud by one brother against the other and it was in those circumstances that the Court made the observations to which we have also referred above.

We are clearly of opinion that merely because some allegations have been made that accounts are not correct or that certain items are exaggerated and so on that is not enough to induce the Court to refuse to make a reference to arbitration. It is only in cases of allegations of fraud of a serious nature that the Court will refuse as decided in *Russel's case* to order an arbitration agreement to be filed and will not make a reference. We may in this connection refer to *Minifie* v. *The Railway Passengers Assurance Company*, (1881) 44 L.T. 552. Looking to the allegations which have been made in this case we are of opinion that there are no such serious allegations of fraud in this case as would be sufficient for the Court to say that there is sufficient cause for not referring the dispute to arbitration. This contention of the appellant must also therefore fail.

S. D. Sukhthankar, S. N. Andley and *Rameshwar Nath*, for Appellant.

A. V. Viswanath Sastri, Senior Advocate and *Ganpat Rai*, Advocate with him, for Respondents.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., P. B. Gajendragadkar and *RaghubarDayal, JJ.*
22nd September, 1961.

Immani Appa Rao *v.* Gollapalli Ramalingamurthi.
C.A. No. 76 of 1959.

Trusts Act (II of 1882), *section* 84—*Hindu Law—Can a father, as a Manager of an undivided Hindu Family sell the shares of his sons—Provincial Insolvency (Amendment) Act No. XXV of* 1948—*Civil Procedure Code (II* of 1908), *Order* 20, *rule* 12 (*c*)—*Estoppel in question of fraud.*

Therefore, we are inclined to hold that the paramount consideration of public interest requires that the plea of fraud should be allowed to be raised and tried, and if it is upheld the estate should be allowed to remain where it rests. The adoption of this course, we think, is less injurious to public interest than the alternative course of giving effect to a fraudulent transfer.

This question has been the subject-matter of judicial decisions in most of our High Courts; and it appears that the consensus of judicial opinion with the exception of the Madras High Court is in favour of the view which we have taken.

Therefore, we must hold that the High Court was in error in not giving effect to the finding recorded by the trial Court that the fraud mutually agreed upon and contemplated by respondents 1 and 2 had been effectively carried out and that in the carrying out of the fraud both the parties were equally guilty.

T. V. R. Tatachari, Advocate, for Appellants.

K. N. Rajagopal Sastri, Senior Advocate, for Respondent 1.

Appeal allowed.

[SUPREME COURT.]

B. P. Gajendragadkar, K. Subba Rao, M. Hidayatullah, J. C. Shah and *Raghubar Dayal, JJ.*
22nd September, 1961.

Badri Narayan Singh *v.* Kamdeo Prasad Singh.
C.A. No. 563 of 1960.

Representation of People Act (XLIII of 1951)—*Is Ghotwals an Office of profit*—res judicata.

The High Court came to two decisions. It came to one decision in respect of the invalidity of the appellant's election in Appeal No. 7. It came to another decision in Appeal No. 8 with respect to the justification of the claim of respondent No. 1 to be declared as a duly elected candidate, a decision which had to follow the decision that the election of the appellant was invalid and also the finding that respondent No. 2, as Ghatwal, was not a properly nominated candidate. We are therefore of opinion that so long as the order in the appellant's appeal No. 7 confirming the order setting aside his election on the ground that he was a holder of an office of profit under the Bihar Government and therefore could not have been a properly nominated candidate stands, he cannot question the finding about his holding an office of profit, in the present appeal, which is founded on the contention that that finding is incorrect.

J. C. Sinha, Advocate, for Appellant.

B. C. Ghosh, Senior Advocate, for Respondent No. 1.

Udaipratap Singh, Advocate, for Respondent No. 2.

G.R. *Appeal dismissed.*

[SUPREME COURT.]

B. P. Sinha, C.J., A. K. Sarkar, M. Hidayatullah, N. Rajagopala Ayyangar and *J. R. Mudholkar, JJ.*
25th September, 1961.

Collector of Customs, Madras *v.* Nathella Sampathu Chetty, etc.
C.As. Nos. 408-410 of 1960 and, Cr. As. Nos. 38, 126, 123 of 1959 and 511 of 1960 and Petition No. 118 of 1958.

The Sea Customs Act, 1878 *(Act VIII of* 1878), *as amended by section* 14 *of Central Act (XXI of* 1955)—178-*A*—*Foreign Exchange Regulation Act,* 1947—*Articles* 14 *and* 19 *of the Constitution of India,* 1950.

Before embarking on this enquiry it is necessary to deal with the argument of the learned Solicitor-General that every point about the constitutional validity of section 178-A of the Sea Customs Act is concluded in his favour by the judgment of this Court in *Babulal Mehta* v. *The Collector of Customs, Calcutta*, (1957) S.C.J. 828: (1957) M.L.J. (Crl.) 765: (1957) S.C.R. 1110). We have already extracted the head-note of the report in the Supreme Court Reports which would appear to indicate that this Court considered only the impact of Article 14 of the Constitution on the provision. Nevertheless, there are some passages in this judgment, which would be immediately referred to, on which reliance was placed by the learned Solicitor-General in support of his contention that this judgment is an authority for the position not merely that section 178-A does not violate Article 14 but that it impliedly, if not expressly, decides that the restriction imposed by it on the right to hold property or to engage in the business of dealing in gold was a reasonable restriction within Article 19 (5) and (6) of the Constitution.

We hold therefore that when a notification issued under section 8 (1) of the Foreign Exchange Regulation Act is deemed for all purposes to be a notification issued under section 19 of the Sea Customs Act, the contravention of the notification attracts to it each and every provision of the Sea Customs Act which is in force at the date of the notification.

We are therefore of opinion (1) that section 178-A was constitutionally valid, (2) that the rule as to the burden of proof enacted by that section applies to a contravention of a notification under section 8(1) of the Foreign Exchange Regulation Act, 1947, by virtue of its being deemed to be a contravention of a notification under sec-

tion 19 of the Sea Customs Act, (3) that the preliminary requirement of section 178-A that the officer seizing should entertain " a reasonable belief that the goods seized were smuggled " was satisfied in the present case. The result therefore is that the petitions under Article 226 of the Constitution filed by the respondent before the High Court should have been dismissed. We accordingly allow Appeals Nos. 408 and 409 with costs throughout (one set of hearing fees), the writ petitions filed by the respondent being directed to be dismissed. In view of our decision in Appeals Nos. 408 and 409, the points raised by the respondent in Appeal No. 410 of 1960 do not require to be decided. That appeal fails and is dismissed. There will, however, be no order as to costs.

Criminal Appeals Nos. 38 of 1959, 126 of 1959, 123 of 1959, and 511 of 1960 and Writ Petition No. 118 of 1958 were not heard on the merits and we have not examined the facts of any of those cases. Those appeals and petitions should, therefore be posted for hearing in the usual course.

C.K. Daphtary, Solicitor-General of India, *H.J. Umrigar* and *T.M. Sen*, (Advocate, with him), for the Appellant in C.As. Nos. 408 and 409 of 1960 and respondent in C.A. No. 410 of 1960.

N. A. Palkhivala, Senior Advocate, (*S. R. Vakil, R. J. Joshi, S. J. Sohrabji* and *J. B. Dadachanji*, Advocates and *S. N. Andley, Rameshwar Nath* and *P. L. Vohra*, Advocates of *M/s. Rajinder Narain & Co.*, with him), for Respondents in C.As.Nos. 408 and 409 of 1960, and Appellant in C.A. No. 410 of 1960.

R. S. Narula, Advocate, for the Appellant in Cr.A. No. 38 of 1959.

C. K. Daphtary, Solicitor-General of India and *N. S. Bindra*, Senior Advocate, *D. Gupta* Advocate with them, for Respondent in Cr.A. No. 38 1959.

T. M. Sen, Advocate, for Intervener No. in Cr.A. No. 38 of 1959.

N. N. Keswani, Advocate, for Intervener No. 2 in Cr. A. No. 38 of 1959.

R. S. Narula, Advocate for *R L. Kohli*, Advocate, for the Appellant in Cr.A. No. 126 of 1959.

C. K. Daphtary, Solicitor-General of India, *H. J. Umrigar* and *D. Gupta*, Advocates with him for the Respondent in Cr.A. No. 126 of 1959.

N. C. Chatterji, Senior Advocate, (*S. K. Kapoor* and *Ganpat Rai*, Advocates, with him), for the Appellant in Cr.A. No. 123 of 1959.

A. S. Bobde, Shankar Anand and *Ganpat Rai*, Advocates, for the Appellant in C.A. No. 511 of 1960.

C. K. Daphtary, Solicitor-General of India, *H. J. Umrigar* and *T. M. Sen*, Advocates, with him), for the Respondent in C.A. No. 511 of 1960.

S. Venkatakrishnan, Advocate for the Petitioner in Petition No. 118 of 1958.

C. K. Daphtary, Solicitor-General of India, *H. J. Umrigarh* and *R.H. Dhebar*, Advocate, with him), for Respondent in Petition No. 118 of 1958.

G.R. — *Orders accordingly.*

[SUPREME COURT.]

K. N. Wanchoo, K. C. Das Gupta, J. C. Shah and *Raghubar Dayal, JJ.*
16th October, 1961.

Haji Sk. Subhan *v.* Madhorao.
C.A. No. 285 of 1958.

Civil Procedure Code (*V of* 1908), *section* 47—*Executability of a decree by a proprietor of a land under the decree after the Madhya Pradesh Abolition of Proprietary Rights* (*Estates Mahal, Alienated Lands*) *Act* (*I of* 1951)—'*Document*' *includes the decree of the Court.*

The question is whether the word 'document' in M. P. Abolition of Proprietary Rights (Estates Mahals, Alienated Lands) Act (I of 1951), includes a decree of the Court. We do not see any good reason why a decree of the Court, when it affects the proprietary rights and is in relation to them, should not be included in this expression.

The main object of sections 3 and 4 and in fact, of the Act itself, is that all the bundle of rights which a proprietor possesses on account of his proprietorship of the land within the estate, etc., should cease, except such rights which are saved to the proprietor under some specific provision of the Act. Any rights which accrues to the proprietor under a decree by virtue of his proprietary rights will not, under the scheme of the Act, prevail over the statutory consequences following the vesting of the proprietary rights in the State and will be lost to the proprietor. One such right is the right of the proprietor under a decree to obtain possession over certain land. Such a decree for recovery of possession is the result of the recognition of the proprietor's right of possession as proprietor over that land as against the claim of the judgment-debtor to retain possession of that land. The proprietary right vests in the State and as a consequence of it the proprietor's right under the decree to obtain possession also vests in the State, even though the State gets right to the possession of the land under other provisions of the Act as well.

N. C. Chatterjee, Senior Advocate and *Dharam Bhushan*, Advocate, for Appellant.

B. S. Shastri, Senior Advocate and *Ganpat Rai*, Advocate, for Respondent

G.R. *Appeal allowed.*

Ramachandra Iyer, O. C. J.
14th July, 1961.

Balakrishna Metha *v.* State of Madras.
C.R.P. No. 1153 of 1960.

Madras Buildings (Lease and Rent Control) Act (XXV of 1949) (*since repealed and re-enacted by Act XVIII of* 1960), *section* 3 (5)—*Government passing order of taking over building under—Landlord not surrendering possession to Government—If entitled to claim rent.*

Where a landlord has not put the Government in possession of a building sought to be taken over by them under the provisions of section 3 of the Madras Buildings (Lease and Rent Control) Act, and is not ready and willing to allow the Government to occupy the same, he cannot claim any rent from the Government in respect of the building merely because the authorised officer made an order of allotment which however could not be given effect to as a result of the landlord not giving possession to the allottee.

N. C. Srinivasan, for Petitioner.

The Government Pleader (*A. Alagiriswami*), for Respondent.

R.M. *Petition dismissed.*

Anantanarayanan, J.
21st July, 1961.

Meenambal *v.* Board of Revenue, Madras.
W.P. No. 67 of 1959.

Madras Estates (Abolition and Conversion into Ryotwari) Act (XXVI of 1948), *section* 11 —*Issue of ryotwari patta—If could be claimed in respect of a tank which is exclusively used by a party for cultivation of his ryoti land.*

Quaere : Whether a ryot can insist as of right for the issue of a ryotwari patta in his favour under section 11 of the Madras Act (XXVI of 1948), in respect of a tank, which is not within the actual limits of his holding, but which is however appurtenant to his holding and which he has been maintaining and whose waters he has been exclusively using for purposes of irrigating his lands ?

V. Vedanthachari, for Petitioner.

The Additional Government Pleader (*M. M. Ismail*), for Respondent.

R.M. *Petition dismissed.*

Jagadisan, J. Karthikeya Mudaliar *v.* Chellam.
25th July, 1961. C.R.P. No. 865 of 1960.

Tanjore Tenants and Pannayals Protection Act (XIV of 1952), *section* 12 (1) *and* (2)—*Complaint by a dismissed pannayal—If should be done within a week—Second application on the same cause of action where an earlier application has been dismissed for default—If barred.*

In view of the fact that the provisions of Order 9, rule 9, Civil Procedure Code, has not been made applicable to the proceedings under the Tanjore Tenants and Pannayals Protection Act, there could be no bar to the filing of a second application under section 12 (2) of the Act even though an earlier application on the same cause of action has been dismissed.

The period of one week prescribed under section 12 (1) could not apply to cases of complaints filed by a dismissed Pannayal. Sub-sections (1) and (2) of section 12 should be read distinctively so as not to import the restriction laid down in sub-section (1) into sub-section (2) of section 12. So read there is no period of limitation prescribed in respect of a complaint by a dismissed Pannayal.

K. S. Naidu and *R. Vijayan,* for Petitioner.

Respondent not represented.

R.M. ——— *Petition dismissed.*

Anantanarayanan, J. Jayamani *v.* Collector of Central Excise, Madras.
28th July, 1961. W.P. No. 42 of 1959.

Constitution of India (1950), *Article* 226—*Ouster of jurisdiction of Court on the doctrine of merger of one order in another—Scope of—Constitution of India* (1950), *Article* 311 (2)—*Denial of opportunity—Natural Justice—Violation of Departmental proceedings—Failure of the Enquiring Officer to compel attendance of witness—When amounts to denial of justice.*

The doctrine of merger which operates to oust the jurisdiction of the High Court under Article 226 of the Constitution is that when the order of a tribunal subject to the jurisdiction of the Court has merged in some order of a higher tribunal not so subject to its jurisdiction, then no writ could issue even against the tribunal subject to its jurisdiction. The only exception to this rule is in cases where the original order itself is a nullity. In departmental proceedings, where the Enquiry Officer is not authorised or empowered under the rules to compel the attendance of witnesses, it cannot be said that failure to compel the attendance of a witness at the request of the accused is a violation of the principles of natural justice or the principle of reasonable opportunity under Article 311 (2) of the Constitution.

M. K. Nambiar, K. K. Venugopal and *N. A. Subramaniam,* for Petitioner.

The Additional Government Pleader for Respondent.

R.M. ——— *Petition dismissed.*

Jagadisan, J. Krishna Goundar *v.* Narasingam Pillai.
7th August, 1961. Appeal No. 163 of 1958.

Tort—Damages for accident caused due to rash and negligent driving—Death of victim—Damages for loss of expectation of life—Basis of.

In awarding damages for accident under the head of loss of expectation of life, the tender age of the victim is not the only basis. Several factors like the prospect of a predominantly happy life, the ups and downs of life, the circumstances of the individual life and so on have to be properly considered and the quantum of damage should be assessed on a consideration of all aspects that have a bearing on the prospective balance of happiness in the years that the deceased might have lived but for the accident.

Benham v. *Gambling,* L.R. (1941) A.C. 157 ; *Garcia* v. *Harland & Wolff,* (1943) 2 All E.R. 477, referred.

[Principles explained—Texts and precedents referred].

T. V. Balakrishnan and *A. Seshan,* for Appellant.

A. Srirangachari, S. Rajaraman and *Messrs. Pais, Lobo* and *Alvares,* for Respondents.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, O. C. J., and Srinivasan, J. Regional Provident Fund Commissioner *v.* Madras Pencil Factory.
8th August, 1961. W.A. No. 61 of 1959.

Employees Provident Fund Act (XIX of 1952)—Applicability of Act—Non-scheduled industry doing incidental items of work that might come under one or other of the scheduled industry—If governed by Act—'Employed in'—Meaning of.

On a plain reading of section 1 (3) of the Employees' Provident Fund Act, 1952, it is clear that the requirement as to the number of persons employed relates to the factory as a whole and not to that part of the industry carried on therein which might come within the category of scheduled industries. In order to attract the provisions of the Act to any factory it should be established that the factory is engaged in a scheduled industry. Where a non-scheduled industry fabricates certain spare parts for use in the industry, the Act cannot be attracted to it merely because the manfacture of such spare parts will be part of a scheduled industry. The Act would apply only when the final product manufactured by the industry is within the scheduled industry and not merely on the ground that certain parts are made for use in in a manufacturing process, which is not scheduled. A factory manufacturing pencils, which is not scheduled, will not be governed by the Act merely because it fabricates certain spare parts for its machinery.

A.I.R. 1957 Bom, 149, foll.

Additional Government Pleader (*M. M. Ismail*), for Appellant.

C. S. Padmanabhan instructed by *Messrs. King & Partridge*, for Respondent.

R.M. ——— *Appeal dismissed.*

Jagadisan, J. Mohd Abdul Khader *v.* Mohd. Thassin Mohmed.
10th August, 1961. A.A.A.O. No. 112 of 1959.

Civil Procedure Code (V of 1908), Order 21, rule 95—Repeated applications by auction-purchaser for delivery of property purchased by him—Maintainability.

Having regard to the scheme of Order 21, rules 95 to 99 and 103 of the Civil Procedure Code, it is open to an auction-purchaser to Court a summary enquiry in cases of obstruction by third parties in his attempt to recover possession of the property purchased by him ; but he is not compelled to seek the aid of the executing Court to obtain possession of the property free from obstruction of third parties claiming independent title. But if he resorts to such machinery and suffers an adverse order he has to file a suit under Order 21, rule 103 within one year from the date of the order. But it is open to an auction-purchaser to file any number of applications for delivery of the property and the fact that any prior application became infructuous due to obstruction caused by even third parties is no bar to the maintainability of another application for the same relief.

P. S. Balakrishna Ayyar and *P. S. Ramachandran*, for Appellant.

T. S. Srinivasan, for Respondent.

R.M. ——— *Appeal dismissed.*

Ramachandra Iyer, O. C. J. Kuppuswami Chettiar *v.* Malayandi Abalam.
24th August, 1961. C.R.P. No. 752 of 1960.

Madras Cultivating Tenants' Protection Act (XXV of 1955), section 4-A (2)—Resumption of land for personal cultivation by owner from a cultivating tenant—Scope of.

The right given to a landlord under section 4-A (2) of the Madras Cultivating Tenants' Protection Act to resume for personal cultivation of one half of the lands leased to a cultivating tenant is such that when once that right is exercised the statutory remedy stands worked out and it is not open to a landlord to go on making successive applications to deprive the tenant of half of his holding as on the date of each application. When a landlord has received half the land from his lessee for personal cultivation under section 4-A of the Act he cannot apply again for such relief on the ground that he has sold away the land possession of which was originally recovered.

A. Ramanathan, for Petitioner.

S. Ramasubramanyam, for Respondent.

R.M. ——— *Petition dismissed.*

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Veeraswami, J. Ramaswami, *In re.*
6th September, 1961. Crl. Appeal No. 118 of 1960.

Penal Code (XLV of 1860), section 295-A—Offence under—Proof of malice—Scope of.

Malice is no doubt one of the important ingredients of an offence under section 295-A of the Penal Code and it is certainly for the prosecution to establish the presence of that element by proper evidence. But, malice being a mere state of mind is not capable of proof by tangible evidence. In almost all cases where it is required to be proved, it has only to be inferred from the circumstances and background of the case.

M. L. Hanumantha Rao, for Appellant.

The Public Prosecutor, for State.

R.M. ——— *Appeal dismissed.*

Anantanarayanan, and *Venkatadri, JJ.* *In re* Nandan Naidu.
11th September, 1961. Crl. App. No. 730 of 1960.

Madras Children Act (IV of 1920), section 22—Proviso—Applicability.

The exception under the Proviso to section 22 of the Madras Children Act, 1920, will apply only in relation to the character of the accused and not to the circumstances of a particular single offence which is the subject-matter of the prosecution. If the known antecedents of the offender are such as to indicate a depraved and incredibly unruly temperament the Proviso will be attracted and protection against life sentence will not apply. But merely because in a particular case it is proved that the youthful offender committed an offence in a deliberate manner the Proviso to section 22 will not be attracted.

K. Narayanaswami Mudaliar, S. Ranganatha Mudaliar and *P. S. Nagarajan*, for Appellant.

The Public Prosecutor, for State.

R.M. ——— *Sentence modified.*

Veeraswami, J. Arumugham Pillai *v.*
21st September, 1961. Ganasoundara Pandian.
Crl.R.C. Nos. 559 and 762 of 1960.
Crl.R.P. Nos. 541 and 734 of 1960.

Penal Code (XLV of 1860), sections 337 and 338—Rash and negligent driving—What is—Tests to decide.

Motor Vehicles Act (IV of 1939), section 112—Rash and negligent driving—What is.

The essence of criminal liability, as distinguished from civil liability, under sections 337 and 338 of the Penal Code is culpable rashness or negligence and not any rashness or negligence. Rashness implies a consciousness or awareness of the mind with reference to the act done and indulging in the act in the fool-hardy hope against any untoward happening. Negligence on the other hand presupposes only a negative state of mind, an absence of awareness or consciousness of what should be done or omitted to be done. Hence where a owner who is duly licensed to practise driving, while attempting to stop the vehicle presses the accelerator pedal instead of the brake pedal due to inexperience and mistake, he cannot be held guilty of the criminal offence of rash and negligent driving.

V. P. Raman and *R. Krishnaswami*, for Petitioner in Cr.R. C. No. 559 of 1960.

S. Mohan Kumaramangalam, G. Rabindranath and *V. M. Jayapandian*, for Petitioner in Cr. R. C. No. 762 of 1960 and for Respondent in Cr.C. No. 559 of 1960.

The Special Public Prosecutor for State in both.

R.M. ——— *Conviction set aside.*

Ramachandra Iyer, C.J. Sivaperumal Kounder *v.* Munusami Kounder.
22nd September, 1961. C.R.P. No. 206 of 1961.

Madras Village Panchayats Act (X of 1950), *section* 16 (2) *and* 19 (1)—*Disqualification of member—Who can apply for decision as to—Leprosy as a ground of disqualification—If should be infectious—Direction of Panchayat—When necessary.*

Interpretation of Statutes—Punctuation marks—If part of a Statute.

Section 19 (1) of the Madras Village Panchayats Act, 1950, provides for three classes of persons who can apply under it for a decision whether a member is disqualified or not under the several sections relating thereto. The first is the member himself who may be in doubt whether he is disqualified and whether he is entitled to continue in office. The second is another member of the Panchayat. The third is the Executive Authority. In cases of first two persons they are given an option to apply for a decision. As regards the Executive Authority the provision is mandatory and the 'clause on the direction of the Panchayat or of the Inspector' in the section would govern only applications filed by the Executive Authority. No such direction is necessary in case of application by the member concerned or any other member of the Panchayat.

Under section 16 (1) of the Act leprosy is made a ground of disqualification. But the section does not make any distinction between infectious and non-infectious types of leprosy. While care should be taken in deciding whether the disease alleged is leprosy or any other form of skin disease, it is not necessary to establish that the leprosy complained of is of the infectious type, before attracting the disqualification.

Though the origin of the rule for disregarding the punctuation marks in the interpretation of a Statute was due to historical factors, it is still a rule of construction that punctuation marks are not to be treated as part of a Statute. It is open to a Court in interpreting a Statute from the language of the section, to put a punctuation mark in its proper place.

N. C. Raghavachari and *N. S. Varadachari,* for Petitioner.

S. Mohan Kumaramangalam, V. C. Palaniswami and *K. Sengottiyan,* for Respondent.

R.M. *Petition dismissed.*

Jagadisan, J. Tamilnad Electricity Workers' Federation *v.*
12th October, 1961. State of Madras.
W.P. No. 1090 of 1960.

Industrial Disputes Act (XIV of 1947), *sections* 10 (1), 12 (5) *and* 19 (1)—*Failure of Government to consider a report of failure of conciliation —If could be compelled by Union in case of public utility services.*

The power of Government to make a reference under sections 10 (1) and 12 (5) of the Industrial Disputes Act, 1947, to an industrial tribunal or labour Court in relation to an industrial dispute in a public utility service, where a strike notice has been given, is unmistakably in the nature of a duty subject to the discretion vested in it under section 19 (1) of the Act. Hence it is the duty of the Government to consider the report of the conciliation officer and decide the propriety or otherwise of making a reference under section 10 (1) read with section 12 (5) of the Act. Failure to exercise the jurisdiction vested in the Government could be enforced by means of an appropriate writ.

Row and *Reddy,* for Petitioner.

The Additional Government Pleader *M. M. Ismail, T. Changalvaroyan* and *P. R. Gokulakrishnan,* for Respondents.

R.M. *Rule absolute.*

Jagadisan and Srinivasan, JJ.
6*th October*, 1961.

Issardass S. Lulla *v.* Hari.
W.P. Nos. 913 and 914 of 1961
and A.A.O. No. 218 of 1961.

Constitution of India (1950), *Articles* 226 *and* 227—*Writs under*—*If could be issued against orders of civil Courts.*

The jurisdiction to issue prerogative writs possessed by the Court of King's Bench in England was not exercised in respect of orders of civil Courts against which a remedy by way of appeal was provided. The Supreme Court established in Madras possessed the same jurisdiction as the Court of King's Bench and the High Court which took the place of the Supreme Court had no greater powers than the Supreme Court. The Constitution has no doubt extended the jurisdiction of the High Court to issue such writs even outside the limits of its ordinary original jurisdiction but limited to the State. But the Constitution has not in any way enlarged the scope, content, nature and operation of the prerogative writs. The language used in Articles 226 and 227 of the Constitution indicates that judgments of subordinate Courts could not from the subject-matter of pregrogative writs, presumably because a party aggrieved by such judgments and orders have the remedy by way of appeal and revision, as efficacious as the remedy by way of writs.

(Origin of jurisdiction traced—Principles of exercise of jurisdiction explained—Nature and purposes of *certiorari* and *mandamus* explained History of Court and case-law considered).

M. K. Nambiar, N. A. Subramaniam and *V. Manivannan*, for Petitioners and *N. C. Raghavachari, N. S. Varadachari, B. Punyakoti Chetti, K. C. Jacob, S. K. L. Ratan, S. Mohan Kumaramangalam* and *K. Parasaram*, for Respondents in W.P. Nos. 913 and 914 of 1961.

N. A. Subramanyam and *N. Veeramani*, for Appellant and *B. Punyakoti Chetty, N. C. Raghavachari, N. S. Varadachari, K. C. Jacob, S. K. L. Ratan, K. Parasaran* and [*M. I. Hanumantha Rao* (Receiver)] for Respondents in A. A. O. No. 218 of 1961.

R.M. *Directions given.*

Sadasivam, J.
21*st October*, 1961.

Sankaran *v.* Corporation of Madras.
Crl. Rev. Case No. 1044 of 1960.
Crl. Rev. Pet. 1013 of 1960.

Madras City Municipal Act (*IV of* 1919), *section* 299 (1) (b)—*Selling milk or dairy products*—*' Lactogen '*—*If milk or dairy product.*

Having regard to the definition of dairy product in section 3 (9-E) of the Madras City Municipal Act, it will be doing violence to language to call ' Lactogen ', a milk product or dairy product. It may be that milk or product of milk is a constituent of Lactogen which contains several other ingredients as well. But on that account Lactogen cannot be equated to milk or dairy produce whose selling is sought to be rgulated by section 299 (1) (*b*) of the Madras City Municipal Act.

P. S. Parameswaran and *M. Mahalingam*, for Petitioner.

T. A. Ramaswami Reddiar, for Respondent.

V. V. Radhakrishnan, for The Public Prosecutor, for State.

R.M. *Conviction set aside.*

[END OF VOLUME (1961) II M. L. J. (N.R.C.).]